EN

Case No IV/M.1517 - RHODIA / DONAU CHEMIE / ALBRIGHT & WILSON

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 13/07/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sirs,

Subject: Case No IV/M. 1517 – Rhodia/Donau Chemie/Albright & Wilson
Your notification of 31.05.1999 pursuant to Article 4 of Council Regulation No 4064/89[1]

1. On 31.05.1999**,** the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Rhodia S.A. (controlled by Rhône-Poulenc S.A.), through Donau Chemie AG, acquires within the meaning of Article 3(1)(b) of the Council Regulation control of the whole of Albright & Wilson plc. by way of public bid announced on 16 March 1999.

2. On 22.06.1999, the parties submitted undertakings designed to eliminate competition concerns identified by the Commission, in accordance with Article 6(2) of the ECMR. In the light of these modifications, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 as amended and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Rhodia is an international group, incorporated in France and active in the field of specialty chemicals. It is a 67,35 % owned subsidiary of Rhône-Poulenc, combining the

[1] OJ L 395, 30.12.89 p.1; corrigendum OJ L 257 of 21.09.90, p.13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 09.07.97, p.1, corrigendum OJ L 40, 13.02.98, p.17).

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chemicals, fibres and polymers businesses of the French pharmaceuticals and life sciences group. Rhodia is active in many fields like fine organics (used in the pharmaceuticals, agrochemicals, food and fragrances industries), manufacturing additives, high performance industrial specialities (e.g. silicones), polyamide products, polyesters etc.

4. Donau Chemie is a privately held Austrian chemicals company and a former subsidiary of Rhône-Poulenc, active in the manufacturing and trading of basic and industrial chemicals.

5. ISPG is a company incorporated in England and Wales and is a wholly owned indirect subsidiary of Donau Chemie and has been newly formed for the purposes of this offer. ISPG has made the offer for Albright & Wilson.

6. Albright & Wilson is an international chemicals company, incorporated in Great Britain, active in phosphates (purified phosphoric acid and phosphates salts), surfactants and phosphorus derivatives and acrylics.

7. As set out in the Heads of Agreement dated 11 March 1999, the offer for the shares in Albright & Wilson has been made through an acquisition vehicle. For the purposes of the bid, Donau Chemie's wholly owned subsidiary Donauchem GmbH has set up a 100 % subsidiary Danube Chemicals Acquisition Corporation (Acquisition Company) in the US, as well as a newly incorporated UK public company Chemical Acquisition Company (ISPG), a wholly owned subsidiary of Acquisition Company. Rhodia has been granted a call option enabling it to acquire Donauchem's equity in Acquisition Company, and thereby Albright & Wilson, assuming the bid is successful.

II. CONCENTRATION

8. Donau Chemie's interest in the transaction is purely financial. It has no long-term industrial interest and is being remunerated for its participation in the bid. Virtually all of the finances for the bid have been arranged by and either provided or guaranteed by Rhodia. In addition, Rhodia has a call option under a legally binding agreement to acquire the entire share capital in Acquisition Company. If this call option is not exercised, the Acquisition Company has in turn a call option over the entire phosphates business of Rhodia which if it is exercised must be financed by Rhodia itself.

9. In the short interim period prior to Rhodia being able to exercise its call option rights, Rhodia has veto rights to certain aspects of the management of Albright & Wilson's business, including over the declaration of dividends and significant investments and corporate transactions, and Rhodia may recommend to Donau Chemie replacements for any of Albright & Wilson's senior management who may decide to leave. Rhodia may also recommend the Chief Executive Officer of ISPG, which would become the immediate parent of Albright if the offer is successful.

10. Rhodia, Donauchem, Acquisition Company and ISPG have also entered into an agreement which regulates the conduct of the parties in connection with the tender and the financing agreements related to it. This agreement essentially subjects Donauchem, Acquisition Company and ISPG to the control of Rhodia insofar as the conduct of the bid for Albright & Wilson is concerned.

11. ISPG/Rhodia have acquired more than 50 % of the shares in Albright & Wilson and the bid is thus unconditional. The operation is therefore a concentration since the operations described above will result in Rhodia finally acquiring Albright & Wilson.

III. COMMUNITY DIMENSION

12. Undertakings Rhodia, Donau Chime and Albright & Wilson have a combined aggregate worldwide turnover in excess of EUR 5,000 million (Rhodia, EUR […] million; Donau Chemie, EUR […] million and Albright & Wilson, EUR […] million). Two of them have a Community-wide turnover in excess of EUR 250 million (Rhodia, EUR […] million and Albright & Wilson, EUR […] million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. Donau Chemie realises two thirds of its Community-wide turnover in Austria. It does not qualify for co-operation with the EFTA surveillance Authority pursuant to article 57 of the EEA Agreement.

IV. COMPETITIVE ASSESSMENT

A. Relevant product markets

13. The notifying parties claim that there is only one overlap between the businesses of Donau Chemie and Albright and Wilson : Rhodia, Albright & Wilson and Donau Chemie are all trading with hydrochloric acid (HC1). HC1 is a by-product of many production processes and is used in the production of several products as starch, cosmetics, animal nutrition and sugar. The geographical market for HC1 is national at the narrowest and probably regional. Donau Chemie sells hydrochloric acid (HC1) in Germany and Austria, where it has a minor position. Rhodia has hydrochloric acid sales in France and the UK. Albright and Wilson also has some hydrochloric acid sales in the UK. Therefore there is an overlap only in the UK. Rhodia estimates its sales of […] Kt to be equivalent to about [0-20] % of the total market. Albright & Wilson produces HC1 only as a by-product and does not sell it onto the merchant market. As a result, this market is not affected for the purposes of the Form CO.

14. The businesses of Rhodia and Albright & Wilson are largely complementary (this is indeed one of the main commercial rationales for the deal). The transaction will, nevertheless, give rise to horizontally affected markets within two sectors: phosphates (in which the combined Rhodia/Albright and Wilson will probably be the leading supplier) and surfactants. At a vertical level, in relation to surfactants, there is one affected market, the market for liquid SO3 (speciality sodium phosphates).

1. Phosphates

15. There are three phosphate categories where the parties have material overlaps, namely sodium phosphates, ammonium phosphates and calcium phosphates. Within each phosphate category there are different formulations and hence grades which cannot be used as substitutes for specific applications due to different functional properties. Therefore, the parties maintain that for the definition of the relevant product markets one has to look at the demand side and consequently at the various applications of these three phosphate categories and the different grades within each category. This approach has been generally confirmed by the market investigation.

Sodium Phosphates

General

16. Approximately 90% of the production of sodium phosphates are sold into the market for detergent builders. The remaining 10% are sold into various niche markets such as the market for leavening agents.

Detergent Builders

17. Detergent builders provide a "skeleton" for holding together the powder grains in the detergent. They also soften the water and fulfil some other functions. Their main field of applications are laundry detergents, which account for almost 80% of all sales, followed by auto dishwasher detergents (10%) and industrial detergents (10%).

18. There are two main alternative systems which compete in the detergent builder market. The first one is based upon sodium tripolyphosphate (STPP), the second upon zeolites, a sodium alumino silicate. Zeolites have been introduced due to environmental concerns. If wastewater is not properly treated STPP contributes to the eutrophication of, for instance, surface waters (increase in the growth of algae). A third system, based on citrates, is used for auto dishwash detergents.

19. The sodium phosphate powder used as detergent builder for all three applications is the same. However, for auto dishwashing and industrial detergents the powder needs to be granulated. Therefore, the price for laundry detergent builders serves as a basis, to which a premium is charged for granulating. Price per quantity needed is very similar for both the STPP and the zeolites system, and so is performance. STPP and zeolites are viewed by customers as substitutes for laundry and for industrial applications. Some of the so called "big soapers" use both systems even for the same brand.

20. For auto dish washing, the alternative system to STPP used by customers is the one based on citrates. Unilever, for instance, bases part of its auto-dishwasher detergents on citrates. Procter & Gamble used to apply citrates but has switched back to STPP. Citrates are less aggressive and therefore better placed to clean delicate tableware. However, citrates, which are used in auto dishwashing only, are considerably more expensive than STPP. According to customers, it is up to 50% more expensive on a per unit cost basis, and less effective. Therefore, the system based on citrates cannot be regarded as a substitute for this application.

21. The relevant product markets could be defined according to the three applications for detergent builders, namely laundry, auto – dishwashing and industry. However, since also under that assumption the assessment would not change, the relevant product market is assumed to be the market for STPP and zeolites used as detergent builders.

Speciality sodium phosphates markets

22. Speciality sodium phosphates are used for various applications such as leavening agents. Rhodia imports only marginal quantities of sodium acid pyrophosphate (SAPP) and sodium hexametaphosphate (SHMP) from its US-production facilities into the EU. Since these imports amount to a sales value of […] €, representing an addition of less than [0-5] % to Albright & Wilson's market share of [25-35] %, this market will not be considered further on a separate basis but in product markets such as the market for leavening agents where sodium specialities are substitutes.

Ammonium Phosphates

23. Ammonium phosphates are used mainly as speciality fertilizer agents. Approximately one quarter of the production is used as ingredients in fire extinguisher powders, as fermentation agents or in miscellaneous industrial applications. Ammonium phosphates are produced in various grades according to the envisaged end use. These grades differ widely in terms of performance and price. Many suppliers have separate divisions for the different markets, i.e. fertilizer, technical and food applications.

Speciality fertilizers agents

24. Speciality fertilizers are different from basic fertilizers because they are completely soluble in water. This characteristic allows them to be used in farming methods such as fertirrigation and greenhouse cultivation, which require foliar application and application through irrigation water. Speciality fertilizers are a blend of three components: nitrogen, potassium and phosphorus. The phosphorus element can be derived from either ammonium, monopotassium or urea phosphates. The ammonium phosphate used in this application is of the fertilizer grade, which is the cheapest quality due to its high water content and relatively low purity. According to the parties, speciality fertilizers could in principle be based on all three phosphate categories without a loss in performance. However, urea phosphate is not used to a significant extent due to technical reasons. This was confirmed by customers.

25. The price of the final product, i.e. the price of one kg of soluble fertilizer, is very similar independently of what phosphate has been used. Therefore, the relevant product market appears to be that for ammonium, monopotassium and urea phosphates agents used in speciality fertilizers. However, the precise market definition can be left open, since even when excluding urea phosphate the operation does not lead to the creation or strengthening of a dominant position in this market.

Ingredients in fire extinguisher powders

26. Ammonium phosphates are a principal component in fire extinguisher powders, accounting for up to 60% of the cost of the final product. They inhibit the combustion reaction by, for example, forming an impermeable layer on the surface of an item. According to customers, it is technically feasible to use monoammonium (MAP) of either technical, feed or food quality. However, the price differential between these grades is around 30%. Therefore, the relevant product market is monoammonium phosphate of the technical grade used for fire extinguisher powders.

The market for fermentation product agents

27. Fermentation product agents serve as nutrients for micro-organisms in the fermentation process. According to the parties there are two competing systems for the fermentation process. The first system uses ammonium phosphates, as a nutrient, the second system requires phosphoric acid as a nutrient. Ammonium phosphate as well as phosphoric acid can only be used as agents in food if they are of the food chemical codex grade, which is the grade with the highest purity. Both systems are used equally in the market. The relevant product market is therefore the market for fermentation product agents.

Calcium Phosphates

28. The calcium phosphates sector is characterised by a number of very small niche markets. The four most important application markets account for 22% to 24% of the total use of calcium phosphates in Europe. In each of these 4 markets different grades of calcium phosphate are used which are produced in separate production units. While

it is technically feasible to switch between for instance monocalcium phosphate monohydrate (MCP-M) food grade and dicalcium phosphate (DCP) oral care this is not normally economically feasible. This was confirmed by the market investigation.

Oral care abrasives

29. Dicalcium phosphate (DCP) is used as an abrasive in toothpaste. This function can also be accomplished by silica or precipitated calcium carbonate (PCC). Performance of the three abrasives is comparable, and so is price. The relevant product market is therefore the market for oral care abrasives.

Leavening agents

30. Leavening agents release CO2 gas when used together with sodium bicarbonate and heated. This helps leavening the dough. Monocalcium (MCP), both anhydrous and monohydrate, can be used as leavening agents. The most widely used leavening agent is SAPP, followed by MCP and sodium aluminium phosphates (SALP). Prices differ widely (by up to 70%) between the cheapest and most widely used agent SAPP on the one hand and MCP and SALP on the other hand. Moreover, MCP, SAPP and SALP differ in both the speed of reaction and aftertaste of the product. Therefore, depending on the ultimate end use of the agent, they are not directly substitutable. Consequently, the relevant product market is the market for calcium phosphate used as leavening agents.

Fortification ingredients

31. Tricalcium (TCP) is used as a fortification ingredient in fortification products, baby food and beverages because of its mineral content. Calcium can alternatively be added in the form of precipitated calcium carbonate (PCC) and calcium citrate. However, the latter two products fulfil only the fortification function and are much cheaper than TCP, which also works as a free flow agent. The price differential between TCP and PCC is 236 %. Therefore, the relevant product market seems to be the market for calcium phosphates sold as fortification agents. However, the precise product market definition can be left open, since even on the narrowest possible definition, i.e. excluding calcium citrate and PCC, the transaction does not lead to a strengthening or creation of a dominant position in this market.

Pharmaceutical excipients

32. Excipients serve as binding and filling agents to form tablets. There are three main products used as excipients. The most commonly used is micro crystalline cellulose (MCC), which, according to the parties, accounts for about 75% of the market. DCP is second most important excipient, followed by PCC. Price per quantity needed and product performance are similar. Therefore, the relevant product market is the market for pharmaceutical excipients.

2. Surfactants and vertically related market SO3

Surfactants

33. Surfactants are products employed in the consumer goods sector as detergents and in the industrial sector as processing aids, where their surface-active properties (foaming, wetting, emulsification, solubilisation, dispersion, etc.) are used to facilitate processing.

Surfactants can be either petroleum-based or can be made from fats and oils. The major petroleum feedstocks are ethylene and n-paraffins. Palm oil, coconut oil and tallow fat are the most commonly used fats and oils. New surfactants can now also be sugar-based.

34. Surfactants are mainly produced either by way of sulfonation or ethoxylation of the respective raw materials. These two transformation processes are applied in the production of, for example, anionic and non-ionic surfactants. On the other hand, cationic and amphoteric surfactants are manufactured by other processes (including various non-specific organic synthesis reactions like esterification, hydrogenation, hydrolysis).

35. In previous decisions[2], the Commission has identified four different product markets within the surfactants sector : anionics, non-ionics, cationics and amphoterics. Surfactants have two structurally different parts within the molecule : the water-repellent (hydrophobic) part, which is usually a long-chain hydrocarbon ; and a water-attracting (hydrophilic) part, consisting of a negatively charged group.

36. The properties of **anionic surfactants** come from their anion, which is negatively-charged. The largest single anionic surfactant, linear alkybenzene sulphonate, is used in most laundry detergents powders.

37. **Non-ionics surfactants** are composed of a long hydrophobic alkyl part connected to a highly polar non charged neutral part. As a group, non-ionic surfactants are less sensitive to hard water than anionics and generate less foam. In many detergent formulations they are added to complement the properties of anionics and cationics.

38. In **cationic surfactants**, the hydrophobic part of the molecule bears a residual positive charge. Cationic surfactants are often quaternary nitrogen salts and are widely used both in non-aqueous systems and in applications such as textile softeners, dispersants and emulsifiers. Cationic surfactants include a wide variety of speciality materials, but are usually classified into fatty amine salts, fatty diamine salts, quaternary ammonium compounds and imidazoline salts. Few cationics are used in laundry detergents because they have higher production costs than both anionics and non-ionics. However, they have certain advantages in terms of performance (anti-microbial properties and attraction to negatively charged surfaces), which justify their use in particular applications. Functional effects of actionic surfactants include : softening, lubrication, corrosion inhibition and anticaking.

39. **Amphoterics surfactants** carry both cationic and anionic groupings within the molecule, acting as anionic materials in alkaline pH conditions and cationic materials in acid pH conditions. Amphoterics are widely used for light-duty washing applications and are also becoming more used in heavy-duty laundry detergents, industrial cleaning formulations and as corrosion inhibitors in metal working and oil-field applications.

40. This classification is largely accepted in accordance with the chemical structure. Another view of the markets could be by sectors served. Typical applications of surfactants include household detergents (55 %), detergents for institutional and industrial cleaning (12 %), personal care (8%) and textile industry (7%). However, a

[2] Case IV/M.310 Harrisons and Crosfield/AKZO

definition according to applications would lead in many cases to a very complex situation because a great variety of surfactants out of the 4 segments described above would come into play. Moreover, the above-defined types of surfactants are sometimes used together in some applications. Therefore it is more appropriate to approach the market definition on a chemical structure basis than on an application basis.

SO3

41. Rhodia is also active in the production of liquid SO3, which is a chemical used primarily in the sulfonation process for the production of anionics surfactants, and constitutes a vertically affected market. Liquid SO3 is produced by burning sulphur in the presence of air and further oxidising the sulphur dioxide by passing it through a catalyst. This gaseous SO3 is subsequently dissolved in sulphuric acid to produce oleum. SO3 is then reformed by boiling the oleum, the resulting SO3 being in liquid form. Liquid SO3 is only used as a sulfonation agent. Subsequent chemistry involves the sulfonation of a number of organic molecules to form surfactants and para-cresol, which is used as an anti-oxidant. Hence the anionics surfactants producers are the main purchasers of SO3. Liquid SO3 cannot be substituted with any other product for the production of almost all types of anionics surfactants. For some very specific types of anionics surfactants, chloro-sulphonic acid can be used as the sulphonating agent but it is more expensive, more effluent is produced and the reaction is more difficult to control. It is therefore unlikely that substitution with CSA would be economically viable and SO3 constitutes thus one relevant product market.

B. Relevant geographic market(s)

1. Phosphates

Sodium Phosphates - Detergent Builders

42. Detergent builders are traded across Europe. The biggest customers for detergent builders are multinational companies which have a pan-European purchasing policy. However, transport costs and just in time deliveries play an important role. There are no quotas or non- tariff barriers, but customs duties on the import of these products amounting to 5.5%. Overseas sources, such as Chinese suppliers depend mostly on the dollar and are, if favourable, used with small quantities as price regulator. Sources from the Mediterranean area do not play a major role in Europe. In addition, there are major over-capacities in Europe. As a consequence, imports from outside the EEA are limited.

43. Moreover, in Italy and Norway, there is a legal ban on the use of STPP in laundry detergents. Similarily, in Germany and The Netherlands, there is a voluntary agreement in place not to use STPP in laundry detergents. In these countries the producers of laundry detergents have to use zeolites and can not switch to STPP. Therefore, for the purpose of this decision, the relevant geographic market for detergent builders is assumed to be the EEA excluding Italy, Norway, Germany and The Netherlands for the use of detergent builders in laundry detergents. However, the precise geographic market definition can be left open, since the proposed concentration does not lead to a strengthening or creation of a dominant position in this market.

Ammonium and Calcium Phosphates

44. The parties based their notification on the assumption that the geographic scope of the markets for both ammonium and calcium phosphates is EEA-wide. The investigation

has largely confirmed that these products are traded across Europe. While, for some of the specific applications, there are imports from outside the Community accounting for more than 10% (on average 13%-15%), the majority of these imports come from two Israeli producers (Haifa and Rotem). The situation for these two producers is different from that of all other extra-Community produces in at least two respects. First, imports from Israel to the Community are not, in contrast to imports from other areas, subject to the existing import duty of 5.5%-6.5%. Second, both Israeli producers have invested in an extensive European distribution system (in the case of Rotem, it also has production facilities in Germany). For these reasons it is not possible to conclude, on the basis of the existing imports from Israel, that the geographic market for ammonium and calcium phosphates is wider than the EEA[3].

45. A large proportion of the remaining imports comes from Rhodia's production facilities in the US. Following the closure of one of its French production plants, Rhodia has been using these imports from the US to complement its European product portfolio. As an important European supplier of ammonium and calcium phosphates, Rhodia needs to be able to provide a full range of the products in question to its European customers. Consequently, the fact that certain grades are imported by Rhodia into the EEA cannot in itself be taken as evidence that the relevant geographic market is wider. This can be further illustrated by statements by another US producer, who currently have some sales to Europe, albeit at a significantly lower level than Rhodia (about 1%), and who is of the opinion that the existing import duties constitute a significant obstacle to increased exports. Other imports, e.g. from South Africa have generally been described as still lacking in quality as well an in terms of reliability of delivery.

46. In conclusion, the Commission's investigation has confirmed that the relevant geographic markets for ammonium and calcium phosphates are essentially EEA-wide in scope.

2. Surfactants and vertically related market SO3

Surfactants

47. The parties consider that each of the surfactants markets described above are EU/EEA-wide markets. The Commission has previously[4] considered the relevant geographic market for the anionic surfactant LAS as being Community-wide.

48. The surfactants are produced worldwide and there is a growing trend for global purchasing by the larger international customers. However, nearly every product is available from several sources regionally (Europe, North America, Central America, South America, Asia) and there is no basis for large amounts of international trade. The surfactants used in large volumes and especially the ones that have high water content have some geographical limitations because of the cost of transportation. Therefore, the geographic market definition on an European level appears to apply equally to all surfactants.

[3] It should also be noted that the inclusion of Israel in the geographic market would not materially change the assessment of the notified concentration.

[4] Case IV/M.612 RWE-DEA/Enichem Augusta

49. Europe is a single market since there is considerable cross border trade within the EEA due to high over-capacity, low product prices and no customer's preference to buy locally, but no significant trade flows between the EEA and other regions of the world. The vast majority of surfactants are directly sold to end-users by the producers. Small customers might be supplied through national distributors but they represent only a small part of the surfactant sales. There are no significant price differences between the EU Member States and the occasional price differences between the Northern and Southern Member States do not exceed 5-10 %.

50. In conclusion, the relevant geographic market for surfactants is European-wide.

SO3

51. The geographical scope of the product market for SO3 is European-wide. The major reason is due to the hazardous nature of the product which makes transport for long distances very expensive. Safety considerations also limit the storage capacity for the product on a producing or consuming site which gives a further preference to local suppliers.. The cross-border and cross-channel sales would support the argument that the geographic market for SO3 is European-wide. Larger distances overseas are more difficult because transport of SO3 also requires effective emergency response systems to be in place for the whole journey.

C. Assessment

1. Phosphates

52. A common feature for all the below described phosphate markets is that they can generally be described as homogeneous, commodity-type products with little or no product development. Therefore, price generally appears to be the main competitive element in these markets.

Sodium Phosphates – Detergent builders

53. According to the parties the total market volume for detergent builders in Europe is 409 Mio. €. The parties submit that their combined market share in the market for detergent builders amounts to [20-30] %. However, manufacturers of laundry detergents for the Italian, Norwegian, Dutch and German markets have no possibility to switch to STPP, since STPP is legally banned in Italy and Norway and banned according to a voluntary agreement observed by all soapers in Germany and The Netherlands. Since in these markets substitution of zeolites by STPP is not possible, these market volumes have been taken out of the total European volume. Consequently the market share of the parties goes up to [30-40] % (Rhodia [15-25] %, A&W [10-20] %), since neither of the parties produces zeolites. The parties' closest competitors are FMC ([10-20] %), Kemira ([5-15] %), Prayon ([5-15] %), Thermphos, a subsidiary of Hoechst, ([0-10] %), Industrial zeolites ([0-10] %) and Degussa (([0-10] %).

54. Rhodia has structural links with Prayon. It sources white phosphoric acid, a raw material for producing phosphate grades such as sodium phosphates, and STPP from Prayon. There are also multi-market contacts between the two groups, in that they, following the notified operation, would constitute the two main producers in a number of phosphate product markets (see below). It has been suggested by third parties that Rhodia and Prayon are commercially regarded as one block in the market. If this is true one might add Prayons [5-15] % market share to the parties' [30-40] %, which results

in [40-50] %. However, the parties have undertaken to sever these links once the merger has been completed.

55. The supply side of this market is concentrated. The top four players account for less than [70-80] % of the market. However, the demand side is equally concentrated. More than [45-55] % of the European sales are made to the big three soapers Unilever, Procter & Gamble and Henkel. These companies enjoy considerable countervailing buying power. The current capacity utilisation is in the region of [less than 80] % resulting in depressed prices. For this reason imports from East Europe and China are limited but might go up should the suppliers of detergent builders try to increase prices.

56. For the above reasons, it seems unlikely, that the operation will lead to the creation of a dominant position in the market for detergent builders.

Ammonium Phosphates

Speciality fertilizer agents

57. As stated above, the phosphorus element in speciality fertilizers can be derived from either (mono-) ammonium phosphate, MKP or urea phosphate. However, as the latter appears not to be used in the market, the total value of the market (excluding urea phosphates) is around 46 Mio. €. The parties supply only ammonium phosphate. Therefore, their combined market share amounts to [20-30] % (Rhodia [15-25] %, A&W [0-10] %). The market leader is Prayon with a market share of [30-40] %. Haifa has around [15-25] % of the market, followed by another Israelian producer, Rotem, with [5-15] % and Fertiberia with [0-10] %.

58. The supply structure in this market is highly concentrated. Following the notified transaction, the top two would account for [55-65] % of the market, and the top four for more than [85-95] %. In addition, there are the above-mentioned links between Rhodia and Prayon. However, the parties submit, that there are a number of factors which work counter to joint dominance. First, the market share increment is relatively small. Second, the demand side is concentrated, and large blenders, such as SQM enjoy considerable buyer power. This is supported by the investigation. Third, demand is growing annually by 3% and barriers to entry are low, which can be seen from the recent entry to the European market by Kynoch, a South African producer.

59. For the above reasons, the operation will not lead to the creation of either single or collective dominance in the market for speciality fertilizer agents.

Ingredients in fire extinguisher powders

60. The combined market share of the parties in this market amounts to ([35-45] % (Rhodia [10-20] %, A&W [20-30] %). The market leader Prayon has [40-50] %. Consequently, these two firms will have [80-90] % of the market. Kynoch and Haifa as the two other market players have [5-15] and ([0-10] % respectively.

61. In this market the market share increment brought about by the operation is significant. Moreover, following the operation, Rhodia and Albright & Wilson's market share will be much more balanced with that of Prayon. A combined market share as high as [80-90] % will normally provide incentives for anticompetitive parallel behaviour. The parties, however, submit that their cost structure differs from that of Prayon, in that the

latter enjoys greater scale economies. Moreover, it has been suggested that there is countervailing power on the side of the customers, and that barriers to entry are low.

62. However, in contrast to the market for fertilizer agents, the investigation has not provided evidence confirming the buyer power arguments. Equally, it has not been possible to confirm the alleged differences in cost structures. Given the existing links between the new entity and Prayon, the significant structural change in the market brought about by the operation and the characteristics of this industry (see point 52 above), it must therefore be concluded that serious doubts exist that the operation could lead to the creation or strengthening of a duopolistic dominant position in this market.

Fermentation product agents

63. The combined market share of the parties in this market amounts to [20-30] % (Rhodia [5-15] %, A&W [10-20] %). The market leader Prayon has [40-50] %. Consequently, these two firms will have [70-80] % of the market. Rotem, Thermphos and Haifa as the three other market players have [10-20] %, [0-10] % and [0-10] % respectively.

64. The notified operation would also in this market result in a relatively significant increment in market share, and would bring the parties to a more balanced situation compared to Prayon. The parties have, using the same arguments as indicated above for fire extinguisher powders, submitted that oligopoly concerns should not exist. However, as for that market, it has not been possible to confirm that the alleged differences in cost structures, countervailing power and/or new entry would render anticompetitive parallel behaviour unlikely.

65. Given the existing links between the new entity and Prayon, the characteristics of this industry (see point 52 above) and the structural change resulting from the merger, it must be concluded that serious doubts exist that the operation could lead to the creation or strengthening of a duopolistic dominant position in the market for fermentation product agents.

Calcium Phosphates

Oral care abrasives

66. In 1998, the overall market value of the oral care abrasives market was approximately 30 Mio. €, of which silica accounted for 24 Mio.€, DCP for 4.6 Mio. €, the balance being held by PCC. The combined market share of the parties amounts to [45-55] % (Rhodia [35-45] %, A&W [5-15] %). Rhodia's market share derives from its sales of silicas, which account for [35-45] %, whereas A&W sells only DCP. The most important competitors are Huber ([10-20] %), Degussa ([5-15] %), Crossfields ([5-15] %) and Budenheim ([5-15] %).

67. Even before the notified operation, Rhodia was the clear market leader, a position which will be significantly strengthened by the proposed concentration. Moreover, the merged entity would be active as a supplier of both silicas and DCP, and could therefore adopt strategies which are not available to competitors who are only selling one of the two products. The parties have claimed that the operation would not give raise to competitive concerns since the demand side of the market is concentrated. According to the parties, the three big toothpaste producers account for [75-85] % of the market. As an example, the parties point at Colgate which buys [75-85] % of the

calcium phosphate in Europe. [*Deleted for publication; the text describes the commercial relationship with Colgate*].

68. It should also be noted that third parties have expressed concerns about the effects of the operation on this market. Therefore, serious doubts exist also for the market for oral care abrasives.

Leavening agents

69. In 1998, the overall market value of leavening agents market was approximately 24 Mio. €, of which SAPP accounted for 19 Mio.€, MCP for 4 Mio. €, the balance being held by SALP. However, as explained above, SAPP and SALP cannot be regarded as substitutes for MCP. The combined market share of the parties in the market for calcium phosphates used as leavening agents amounts to [40-50]% (Rhodia [30-40]%, A&W [5-15]%). The market leader Budenheim accounts for [45-55]%, Solutia for [0-10]%.

70. The supply structure in this market is already concentrated. The operation would create a situation where Budenheim and the parties will have a balanced combined market share of [90-100]%. However, the parties submit, that there are a number of factors which work counter to joint dominance. First, the market suffers from overcapacity which would allow the smaller firm to gain market shares should the two market leaders raise prices above the competitive level. Second, the products are sold in small quantities which would make price transparency and price co-ordination difficult. Third, the smaller supplier is vertically integrated up to the raw material, which would make him a fierce competitor and even more so, should the proposed merger with the American competitor FMC get regulatory clearance in the US.

71. However, the market investigation has not confirmed that there are overcapacities distributed among the players in a way that would allow for breaking up parallel anti-competitive behaviour. Concerning the price transparency argument it has to be noted that the product is sold through wholesalers who are likely to have a clear picture of price developments. Lastly, vertical integration does not seem to be decisive in this market, as the market leader Budenheim is not vertically integrated. Therefore, serious doubts exist also for the market for leavening agents.

Fortification ingredients

72. The combined market share of the parties as a result of the concentration amounts to [20-30]%. The market leader, Budenheim, would have [65-75]%. In economic terms this means that as a result of the merger the market structure would be a duopoly with a joint market share of [90-100]%.

73. It could be argued that the operation will reduce the competitive level in this market, as two smaller challengers to Budenheim are likely to produce a more competitive environment than just one. Nevertheless, in view of the large imbalance in market share between the parties and Budenheim, a creation or strengthening of a joint dominant position seems unlikely.

Pharmaceutical excipients

74. The combined share of the parties in the market for pharmaceutical excipients amounts to [0-10]% only. Therefore, this market is not an affected market.

2. Surfactants and vertically related market SO3

Surfactants

75. The impact on the different surfactants markets will be limited because Rhodia is mainly active in the USA but only a minor supplier of surfactants in Europe with EU market shares of only between [0-10] and [0-10]% in the different surfactants markets described above. Albright & Wilson is a larger player in these markets, but still has shares of each of the relevant EU product markets of less than [5-15] %, except in anionics where it has, approximately [15-25]%. The market for anionics is indeed the only one where the parties have a combined share higher than 15 %. However, as with each of the other relevant surfactants markets, the market share increment brought about by the proposed transaction in anionics is insignificant (Rhodia only has [0-10] % of this market) and will not have any significant effect on competition in the market.

76. As regards all relevant markets, the notifying parties claim the surfactants industry is very competitive. There are at least 12 major international companies competing in this sector in the EU, none of them holding a share exceeding [15-25] % of the sector. On the market for anionics, the new entity will face the competition of Condea ([10-20] % of market share) and Henkel ([5-15] %). On the market for non-ionics, the new entity will have a market share of [5-15] % and will face the competition of Condea ([10-20] %), ICI ([5-15] %), BASF ([5-15] %) and Clariant ([5-15] %). On the market for cationics, the new entity will have a market share of [5-15] % and face the competition of Akzo Nobel ([15-25] %), Clariant ([10-20] %), Fina ([5-15] %) and Kao ([5-15] %). In the market for Amphoterics, the parties will have a market share of [10-20] % and face the competition of Akzo Nobel ([15-25] %), Witco ([15-25] %), Goldschmidt ([5-15] %) and Clariant ([5-15] %).

77. There is substantial overcapacity within the EU, estimated to be around 25-30 %. Barriers to entry are low and the technology is easily available. The purchasing power of customers is strong – these include international companies such as Procter & Gamble, L'Oréal, Lever, Colgate and Johnson & Johnson.

78. Accordingly, the transaction will not lead to the creation or strengthening of a dominant position in the different surfactants markets as a result of which competition would be significantly impeded in the common market or any substantial part of it.

SO3

79. Concerning SO3, the total European market had a volume of 44 000 tons and a value of Euro 8.1 million in 1998. Albright & Wilson has recently (at the end of 1998) stopped producing SO3 in its manufacturing plant at Whitehaven and purchases it from external suppliers (like ICI for example). Rhodia had in 1998 a market share in Europe of [40-50] % by volume and [35-45] % by value. Accordingly, SO3 is a vertically affected market for the purposes of Form CO as Rhodia's share of the European market exceeds 25 % and Albright & Wilson is present in the downstream market for the production of surfactants. In addition, Rhodia currently supplies Albright and Wilson with SO3 in France and the UK.

80. The only other companies producing SO_3 are Hays, Atochem and ICI. The offer is quite concentrated since they have respectively [35-45] %, [15-25] % and [0-10] % of market share in value in the European market. None of the producers of liquid SO3 is presently

integrated downstream in the production of surfactants with the exception of ICI, which owns Unichema, a British surfactants producer.

81. This operation affects the demand structure since Albright & Wilson will probably take all their requirements from Rhodia after the operation. But, given the hazardous nature of SO3, more and more other users are also turning to autoproduction and the market has significantly decreased in the last few years. Some purchasers, like Procter & Gamble have announced that they will stop buying SO3 in the near future. Even if the two main surfactants competitors of Rhodia (Henkel and Condea) do not produce SO3, the producers of surfactants have in practice the possibility of turning to autoproduction by making use of the so-called Balestra technology. Many surfactants producers have already done so. For example, Witco, which is an important purchaser of SO3 in the Netherlands, has switched to autoproduction in its French plant. Rhodia's other customers wouldn't have any difficulty in switching large quantities to another supplier since Albright & Wilson use to purchase SO3 from others and there are overcapacities on the market. Accordingly, the transaction will not lead to the creation or strengthening of a dominant position in the SO3 market as a result of which competition would be significantly impeded in the common market or any substantial part of it.

V. MODIFICATIONS TO THE PROPOSAL

82. In order to obtain phase I clearance, Rhodia is offering an irrevocable commitment to enter into a toll manufacturing agreement with Europhos or, in the event, that Europhos declines, a viable and independent third party for a volume equivalent to Rhodia's current sales of calcium phosphates in Europe. Europhos is currently acting as a sales agent for Rhodia and has already agreed to enter into negotiations with Rhodia on the toll manufacturing agreement.

83. Furthermore, Rhodia is offering an irrevocable commitment to provide a viable and independent third party active in the phosphates business a list of all customers of either Rhodia or Albright & Wilson in the two markets in the ammonium phosphate sector which are subject to serious doubts. On request, Rhodia is prepared to enter into a toll manufacturing agreement with this third party on the same conditions as for calcium phosphates.

84. In adition, Rhodia grants *[Deleted for publication; the text describes the practical details of the commitment].* Coupled with *[Deleted for publication; the text describes the practical details of the commitment],* these two undertakings will eliminate the competitive concerns in the ammonium and calcium phosphates markets arising out of the concentration. Moreover, Rhodia also undertakes to sever all structural links with the competitor Prayon concerning the supply of the upstream product phosphoric acid and the sodium phosphate STPP. These links contributed to the perception of some customers that Rhodia and Prayon constituted one commercial block.

85. As a result, the undertakings proposed would have the effect of removing any competition concerns which might otherwise have resulted from the overlap on the four markets identified above.

VI. CONCLUSION

86. The Commission has concluded that the undertakings are sufficient to address the competition concerns raised by this concentration. Accordingly, subject to the commitments proposed by the notifying parties (see annex 1 to the present decision) it 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,

Case No. IV/M.1517

RHODIA/DONAU-CHEMIE/ALBRIGHT & WILSON

COMMITMENTS TO THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 6(2) OF COUNCIL REGULATION (EEC) NO. 4064/89

Pursuant to Article 6(2) of Council Regulation (EEC) No. 4064/89 (as amended) (the ***Regulation***), Rhodia SA (***Rhodia***) hereby gives the commitments set out below to the Commission of the European Communities (the ***Commission***) in order to achieve clearance of its acquisition of Albright & Wilson PLC (***Albright & Wilson***) (the ***Transaction***).

Calcium Phosphates Markets

1. Within a period of *[Deleted for publication]* from the date of the Commission having issued a decision pursuant to Article 6(1)(b) of the Regulation clearing the Transaction (the ***Decision***), Rhodia undertakes:

(a) to enter into a toll manufacturing agreement with Europhos on normal commercial terms if so requested by Europhos. The agreement will provide for the manufacture on behalf of - and using acid supplied by - Europhos of calcium phosphates for supply to the oral care abrasives, leavening agents and fortification ingredients markets (the ***Relevant Calcium Phosphates Markets***) within the EEA. The toll manufacturing agreement will have a term of *[Deleted for publication]*, renewable thereafter on a yearly basis by Europhos and will be based on take or pay principles common in similar manufacturing arrangements. The agreement will reserve the amount of capacity required annually by Europhos up to a maximum of *[Deleted for publication]* tonnes of calcium phosphates per annum at Rhodia's US calcium phosphates production facilities, thereby covering the current level of supplies of Rhodia products achieved by Europhos in the Relevant Calcium Phosphates Markets in the EEA and reasonable growth expectations in those markets. The agreement shall not prevent Europhos during the life of the agreement from switching to autoproduction of the relevant calcium phosphates, or from sourcing such calcium phosphates from a third party; and

(b) to grant to Europhos an exclusive royalty free licence of those Rhodia trademarks and brand names currently used by Europhos in distributing calcium phosphates products within the EEA in the Relevant Calcium Phosphates Markets**.** Such licence shall not prohibit Europhos from distributing competing products under other trademarks and/or brand names. In the event that Europhos requests Rhodia to enter into the toll manufacturing agreement described in paragraph 1(a), the licence shall apply to those products manufactured under the toll manufacturing agreement and shall continue for the period that such products are toll manufactured and, in respect of any product which Europhos no longer requires to be toll manufactured, for a period of *[Deleted for publication]* after the toll manufacturing of such product ceases in the event that rebranding of such product is reasonably required by Europhos. In respect of any product for which Europhos does not request Rhodia to enter into the toll manufacturing agreement described in paragraph 1 (a), the licence shall continue for a period of *[Deleted for publication]* from the date it is granted to allow for the rebranding of the relevant products by Europhos. The licence will contain appropriate quality control provisions.

2. In the event that Europhos does not agree to the arrangements set out in paragraph 1 above, Rhodia undertakes within a period of *[Deleted for publication]* from the date on which Europhos indicates that it does not agree with such arrangements:

(a) to enter into a toll manufacturing agreement with a viable and independent third party active in the phosphates business in the EEA and approved by the Commission if so requested by such third party. The agreement will be on normal commercial terms and will provide for the manufacture on behalf of - and using acid supplied by - such third party of calcium phosphates for supply to the Relevant Calcium Phosphates Markets in the EEA. The toll manufacturing agreement will have a term of *[Deleted for publication]*, renewable thereafter on a yearly basis by the third party and will be based on take or pay principles common in similar manufacturing arrangements. The agreement will reserve the amount of capacity required annually by the third party up to a maximum of *[Deleted for publication]* tonnes of calcium phosphates per annum at Rhodia's US calcium phosphate production facilities, thereby covering the current level of supplies of Rhodia products achieved by Europhos in the Relevant Calcium Phosphates Markets in the EEA and reasonable growth expectations in those markets. The agreement shall not prevent the third party during the life of the agreement from switching to autoproduction of the relevant calcium phosphates, or from sourcing such calcium phosphates from a third party;

(b) to grant to such third party an exclusive royalty free licence of those Rhodia trademarks and brand names currently used by Europhos in distributing Rhodia products within the EEA in the Relevant Calcium Phosphates Markets. Such licence shall not prohibit the third party from distributing competing products under other trademarks and/or brand names. In the event that the third party requests Rhodia to enter into the toll manufacturing agreement described in paragraph 2(a), the licence shall apply to those products manufactured under the toll manufacturing agreement and shall continue for the period that such products are toll manufactured and, in respect of any product which such third party no longer requires to be toll manufactured, for a period of *[Deleted for publication]* after the toll manufacturing of such product ceases in the event that rebranding of such product is reasonably required by such third party. In respect of any products for which the third party does not request Rhodia to enter into the toll manufacturing agreement described in paragraph 2(a), the licence shall continue for a period of *[Deleted for publication]* from the date it is granted to allow for the rebranding of the relevant products by the third party. The licence will contain appropriate quality control provisions;

(c) to provide to such third party a list of all customers known to Rhodia which are supplied by Europhos with Rhodia calcium phosphate products in the Relevant Calcium Phosphates Markets in the EEA as at the date of the Decision;

(d) not to compete with such third party in the EEA for a period of *[Deleted for publication]* from the date of the Decision in supplying calcium phosphates in the Relevant Calcium Phosphates Markets to any customer appearing on the list referred to in paragraph 2(c) above; and

(e) to terminate all existing arrangements between Rhodia and Europhos relating to the supply or distribution of calcium phosphates in the Relevant Calcium Phosphates Markets (including all relevant trademark and brand name rights enjoyed by Europhos referred to in paragraph 2(b) above).

Ammonium Phosphates Markets

3. Within a period of *[Deleted for publication]* from the date of the Commission having issued the Decision, Rhodia undertakes:

(a) to provide to a viable and independent third party active in the phosphates business in the EEA and approved by the Commission either, at the option of Rhodia:

(i) a list of all customers which are supplied by Rhodia with Rhodia ammonium phosphates products in the fire extinguisher powder ingredients and fermentation products agents markets (the ***Relevant Ammonium Phosphates Markets***) in the EEA as at the date of the Decision; or

(ii) a list of all customers which are supplied by Albright & Wilson with Albright & Wilson ammonium phosphates products in the Relevant Ammonium Phosphates Markets in the EEA as at the date of the Decision;

(b) not to compete with such third party in the EEA for a period of *[Deleted for publication]* from the date of the Decision in supplying ammonium phosphates in the Relevant Ammonium Phosphates Markets to any customer on the list which Rhodia supplies to such third party pursuant to paragraph 3(a).

4. If so requested by such third party, within a period of *[Deleted for publication]* from the date of the Commission having issued the Decision, Rhodia undertakes to enter into a toll manufacturing agreement with the third party. The agreement will be on normal commercial terms and will provide for the manufacture on behalf of - and using acid supplied by - the third party of ammonium phosphates for supply to the Relevant Ammonium Phosphates Markets in the EEA. At the option of Rhodia, toll manufacturing shall be performed either at Rhodia's or Albright & Wilson's European ammonium phosphates production facilities. The toll manufacturing agreement shall have a term of *[Deleted for publication]*, renewable thereafter on a yearly basis by the third party and will be based on take or pay principles common in similar manufacturing arrangements. The agreement will reserve the amount of capacity required annually by the third party up to a maximum of *[Deleted for publication]* tonnes of ammonium phosphates per annum at the relevant facility, thereby covering the current level of supply to the customers listed on the relevant list referred to at paragraph 3(a) in the Relevant Ammonium Phosphates Markets in the EEA and reasonable growth expectations in those markets.

Termination of links with Prayon

5. Within a period of *[Deleted for publication]* from the date of the Decision, in addition to the undertaking in paragraph 2(e), Rhodia undertakes to serve notice of termination in relation to the following agreements with Prayon, namely:

(a) an agreement dated *[Deleted for publication]* for the supply of phosphoric acid by Prayon to Rhodia; and

(b) an agreement dated *[Deleted for publication]* for the supply of certain grades of sodium tripolyphosphate (STPP) by Prayon to Rhodia.

6. Within a period of *[Deleted for publication]* from the date of the Decision, Rhodia undertakes to appoint an independent expert acceptable to the Commission to monitor compliance with paragraphs 1-5 above. Such expert shall be mandated to monitor and advise the Commission as to the adequacy of the arrangements adopted in compliance with paragraphs 1-5 above, and to provide the Commission with written reports each month on the efficacy of those arrangements. Rhodia undertakes to provide the expert with all such assistance and information as the expert may require in carrying out his or her mandate and to pay reasonable remuneration for the expert's services.

7. Completion of the transactions envisaged by the above commitments will be subject to the Commission having issued the Decision.

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Michel Maupu
Duly authorised for and on behalf of
Rhodia SA