

*Case No IV/M.1682 -  
ASHLAND /  
SUPERFOS*

Only the English text is available and authentic.

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

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Article 6(1)(b) NON-OPPOSITION  
Date: 23/09/1999

*Also available in the CELEX database  
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## COMMISSION OF THE EUROPEAN COMMUNITIES

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 Where possible the information omitted has been replaced by ranges of figures or a general description.

Brussels, 23.09.1999  
SG (99) D/7709

PUBLIC VERSION

MERGER PROCEDURE  
ARTICLE 6(1)(b) DECISION

To the notifying party

Dear Sirs,

**Subject: Case No IV/M.1682 – Ashland / Superfos**

Notification of 20.08.1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 20 August 1998, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup>, as amended by Council Regulation (EEC) No 1310/97<sup>2</sup> (“the Merger Regulation”), by which the Kentucky (USA) based undertaking Ashland Inc. (“Ashland”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the Denmark based undertaking Superfos a/s (“Superfos”) by way of an unsolicited public bid announced on 09.08.99.

### I. THE PARTIES

2. Ashland is a diversified energy and chemical company with activities in speciality chemicals, chemical and plastics distribution, motor oil and car care products and highway construction and paving. Furthermore, Ashland holds participations in the crude oil refining and marketing business (Marathon Ashland Petroleum L.L.C. (“MAP”)) and in the coal industry (Arch Coal, Inc. (“Arch Coal”)).
3. Superfos is an internationally active company with activities in the following four business areas: (i) asphalt production and road construction in five states in the Southern part of the United States; (ii) production and distribution of plastics packaging primarily in Europe; (iii) contract filling and distribution of aerosols in Europe; and (iv) distribution of chemical products in Northern European countries.

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<sup>1</sup> OJ L 395, 30.12.1989, p. 1; corrected version in OJ L 257, 21.9.1990, P. 13.

<sup>2</sup> OJ L 180, 9.7.1997, p. 1.

## **II. THE OPERATION**

4. The notified operation concerns a public Tender Offer, announced on August 9, 1999, to the Shareholders of Superfos (Superfos' shares are traded on the Copenhagen Stock Exchange) whereby Ashland offers to purchase all outstanding shares of Superfos at US\$21 per share of DKK20 nominal value. The acceptance period was set to expire on September 20, 1999, but was prolonged on September 20 until September 29, 1999. The Tender Offer is subject to acceptance of the Tender Offer by shareholders representing more than 90% of the total share capital. Therefore, the notified operation is a concentration within the meaning of Article 3(1)(b) of the Merger Regulation.
5. On September 9, 1999, the Board of Directors of Superfos recommended the shareholders of Superfos not to accept Ashland's Offer.

## **III. COMMUNITY DIMENSION**

6. The combined aggregate world-wide turnover of the undertakings concerned exceeds € 5 000 million (Ashland: € 5,577 million; Superfos: € 964 million). The aggregate Community wide turnover of each party exceeds € 250 million (Ashland: € [...] million; Superfos: € 366 million). They do not achieve more than two-thirds of their turnover in one and the same Member State. The operation has therefore a Community dimension.

## **IV. PRODUCT MARKETS**

### Relevant product markets

7. Within the EEA, the only overlap between the two companies is in the distribution of certain chemicals and speciality chemicals. However, it is not necessary, for the purposes of this case, to define the relevant product markets as regardless of the definition (each product constituting a separate market, or several products grouped together constituting a separate market), there is no competition problem in view of the limited presence of Ashland within Europe.
8. There are also some vertical issues with regard to aerosol filling by Superfos of a rust prevention product from Ashland; and the production of thermoplastic resins (polypropylene copolymers) by Ashland that Superfos buys to produce plastic lids to fit the one-way PET bottles that it makes and sells. It is, however, not necessary to define the relevant product markets as regardless of the definition, there is no competition problem.

### Relevant geographic market

9. It is not necessary to define the relevant geographic market for the products described above as whatever the definition, national or EEA-wide, the concentration does not give rise to a competition problem.

## V. ASSESSMENT

10. Ashland's Industrial Chemicals & Solvents Division sells [a limited number of] products within the EEA (but not in the Nordic countries) for a total turnover of [less than € 1 million] in 1998. Superfos sells 4 of these products in Denmark and Sweden and only for one of these products, it has a market share of more than 25% in these countries. In the absence of any overlap on a national market basis and in view of the very limited overall sales of Ashland, there is no competition concern with regard to these products.
11. Ashland's Electronic Chemicals Division sells special grade acids, solvents and powders ("Special Grade Chemicals") as ingredients to the fibres and pharmaceutical industry and to the manufacturers of industrial chemicals and microelectronics and as laboratory reagents to laboratories and research entities. Within Europe, these sales are almost exclusively to Italy and none in the Nordic countries. Superfos sells some of these chemicals, without being able to give specific information on "Special Grades", in Denmark and Sweden. For one product, with sales of around € 1.5 million, Superfos would have a market share of around 40% in one Member State. However, Ashland's total European sales for this product are substantially below € 0.5 million. In the absence of any overlap on a national market basis, and in view of the limited overall sales of Ashland ([below € 5] million for its 10 best selling chemicals) for all products and for the one product in particular where Superfos has an important position in one Member State, there is no competition concern with regard to these products.
12. Ashland's Fine Ingredients division distributes ingredients for nutritional supplements in Europe for a total value of [below € 3] million in fiscal year 1998. Superfos sells the same products for a total value of around € 50 million in the Nordic countries. The sales overlap only in Denmark and Sweden. However, Superfos' market shares on a national market basis are less than 10% in these countries and with Ashland being considerably smaller, there is no competition concern with regard to these products.
13. Superfos aerosols filling business highest market share for filling aerosol rust prevention products is approximately 25% in one Member State. There are around 10 competitors in that Member State. Ashland has a market share for aerosol rust prevention containers in the EEA being considerably below 10%. Even if the market share would be higher in some Member States, the bigger companies such as Dinitrol are also active in these Member States. Therefore, there is clearly no risk for foreclosure nor for another competition concern stemming from this vertical relationship.
14. Ashland's market shares in thermoplastic resins and for polypropylene copolymers is far below 25% in any of the EEA Member States and in the EEA as a whole. On the other hand, Superfos uses the polypropylene copolymers for the production of plastic lids for its production of (one-way) PET bottles. As Superfos' market shares of PET bottles in each of the six EEA States where it operates is below 15%, there is clearly no risk of foreclosure nor for another competition concern stemming from this vertical relationship.

## **VI. CONCLUSION**

15. For the above reasons, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

For the Commission,