

*Case No COMP/M.1710 -  
INDUSTRI KAPITAL  
1997 LTD  
(MARMORANDUM) /  
NESTE CHEMICALS*

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: 29/11/1999

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.11.1999  
SG (99) D/9592

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M. 1710 – Industri Kapital 97 Ltd (Marmorandum)/Neste Chemicals Oy**

Notification of 22 October 1999 pursuant to Article 4 of Council Regulation No 4064/89

1. On 22 October, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89<sup>1</sup> (“the ECMR”) as last amended by Regulation (EC) No 1310/97<sup>2</sup> according to which Industri Kapital 97 Ltd. (“IK 97 Ltd”) through Marmorandum Oy Ab (“Marmorandum”) acquires, within the meaning of Article 3(1)(b) of the Regulation, sole control of the Neste Chemicals group (“Neste”), composed of a number of subsidiary companies and certain assets controlled until now by Neste Chemicals Oy.

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<sup>1</sup> OJ L 395, 30.12.1989, p.1; corrigendum, OJ L 257, 21.9.1990, p.13.

<sup>2</sup> OJ L 180, 9.7.1997, p.1; corrigendum OJ L 40, 13.2.1998, p.17.

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of the Council Regulation 4064/89 and does not raise serious doubts as to its compatibility with the Common Market and the functioning of the EEA Agreement

## **I. THE PARTIES**

3. IK 97 Ltd is an investment management company. It administers the investments of Industri Kapital 97 Fund ("IK 97 Fund") an investment vehicle which is one of the funds offered by the Industri Kapital group. Other funds offered by the group are the Industri Kapital 89 Fund ("IK 89 Fund") and the Industri Kapital 94 Fund ("IK 94 Fund"). These funds are administered respectively by Industri Kapital 89 Ltd ("IK 89 Ltd") and Industri Kapital 94 Ltd ("IK 94 Ltd").
4. All the investments management companies are owned by Industri Kapital Europe B.V. which in turn is owned by Industri Kapital N.V., the ultimate parent company in the Industri Kapital group
5. IK 97 Fund is not a legal entity, but a contractual arrangement between IK 97 Ltd and the investors in the Fund. There are two kinds of investors in the Fund: limited partners and the Consortium investors.
6. IK 97 Ltd will have sole control over Neste after the proposed transaction. It will exercise that control on behalf of all the investors in the IK 97 Fund. In respect of the proposed transaction Marmorandum is used as an acquisition vehicle by IK 97 Fund.
7. Neste manufactures and distributes products for the industrial adhesives and coating markets. The business activities include, in principle, four different product areas: adhesive resins, oxo intermediates, unsaturated polyester and gelcoats, and paper chemicals.

## **II. THE OPERATION AND THE CONCENTRATION**

8. The notification concerns the acquisition of all the shares in subsidiary companies and all the assets making up the Neste Chemicals group. The sellers are Neste Chemicals Oy and Neste Chemicals Benlux Holding B.V. which in turn are controlled by Forum Gas and Oil Oy. The notified operation will therefore result in the acquisition of sole control within the meaning of Article 3(1)(b) of the ECMR.

## **III. COMMUNITY DIMENSION**

9. The undertakings concerned have a combined aggregate worldwide turnover of more than ECU 2,500 million. In 1998 the IK 97 Group had a total turnover of EUR 3,175.7 million. The corresponding figure for Neste was ECU 1181.9 million. The combined turnover of the IK 97 Group and Neste exceed ECU 100 million in Austria, Denmark, Finland, France, Germany, the Netherlands, Sweden and the UK. The turnover of each of the IK 97 Group and Neste exceeds ECU 25 million in Austria, Finland, France, Germany, the Netherlands, Sweden and the UK. The aggregate Community-wide turnover of each of the undertakings concerned is more than ECU 100 million (the IK 97 Group 2,542.8 million and Neste 470.4 million). They do not achieve more than two-thirds of their aggregate Community-wide

turnover within one and the same Member State. The notified operation therefore has a Community dimension.

#### **IV. COMPETITIVE ASSESSMENT**

##### **A. Relevant product markets**

10. According to the notification, the only affected markets are the market for building insulation and the market for N-butanol.
11. The parties have indicated that the market for insulation materials can be divided into three different product groups: building insulation, technical insulation and insulation elements. Building insulation is used to isolate roofs, walls and floors in buildings and other spaces. However, according to the parties, this market cannot be further subdivided and therefore building insulation should be considered as one single product market.
12. The second product market is the market for N-butanol (oxo business). The parties have indicated that the oxo business market includes three product categories, oxo intermediates, vinyl intermediates and coating intermediates. The parties have also indicated that the oxo intermediates include N-butanol, iso-butanol, aldehydes, propionic acid (PRA) and 2-ethylhexanoic acid (2-EHA).
13. N-butanol is used in surface coatings and automotive lube-oil either in a derivative form or consumed directly as a solvent in surface coatings. The parties have indicated that the market for N-butanol cannot be further subdivided and, hence should be regarded as one single product market.
14. Competitors and customers in the N-butanol market largely confirm the market definitions indicated by the parties. However, the definition of the relevant product markets may be left open in the present case since the transaction would 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 thereof irrespective of the market definitions chosen, as set out in the competitive assessment below

##### **B. Relevant geographical market**

15. According to the parties the relevant geographic market for building insulation is national since the cost for transporting building insulation is relatively high.
16. Furthermore, it has been indicated that the relevant geographic market for N-butanol is at least EEA-wide since there are no significant barriers for transport or distribution of N-butanol and the products are exported through out Europe.
17. However, it is not necessary to define the relevant geographical markets for the products described above as whatever the definition may be, national, EEA-wide or global, the concentration does not give rise to competitive problems.

##### **C. Competitive assessment**

18. It has been stated in the notification that no company within the Industri Kapital Group is active on the same product markets as Neste or on any neighbouring markets even when all the Funds in the IK Group have been considered. MSC Metsa Specialty

Chemicals, one of the portfolio companies in the IK 94 Fund, produces carboxymethyl cellulose but it appears not to be substitutable with any of the products marketed by Neste. Consequently, there are no horizontally affected markets.

19. As regards any vertically affected markets, one of the portfolio companies in the IK 97 Fund, Partek Insulation AB (“Partek”), is active in the market for insulation materials. In the manufacturing of the insulation products, formaldehyde based insulation binders are used. Neste manufactures formaldehyde based insulation binders, and has a market share at about [0-10%]. Consequently there is a vertical relation.
20. As indicated above, it appears that the market for insulation can be divided into building insulation, technical insulation and insulation elements. According to the parties, it is only in the market for building insulation that Partek has a market share exceeding 25%. Partek has approximately [25-35%] of the Swedish market and [45 - 55%] of the Finnish market. However, there are some important competitors in the building insulation market (Bakelite GmbH, Dyno Industrier ASA, Perstorp AB). In Sweden, the leading competitors are Isover Gullfiber AB with [45-55%] and Roxull AB with [5-15%] of the market. In Finland, Isover Oy has [30-40%] and Thermisol Oy has [10-20%] of the market.
21. The parties indicate that the formaldehyde based insulation binders only represent around 10% of the value of the total production costs for building insulation. Moreover, as Neste’s market share is relatively limited and there are other important suppliers (Bakelite GmbH, Perstorp AB and Dyno Industrier ASA), there is no indication that the vertical relationship between Neste and Partek would lead to a foreclosure effect as a result of the transaction.
22. The second vertically affected market is the market for N-butanol which Neste produces. Neste engages Superfos A/S (“Superfos”), a company recently acquired by IK 97 Ltd. (see Case COMP/M.1748 – Industri Kapital 97 Ltd./Superfos), as its distributor of N-butanol in Denmark.
23. Neste’s sales made through the Superfos group amounts to approximately ECU [...] million, which corresponds to approximately [0-10%] of the Superfos group’s total turnover in Denmark in 1998. Furthermore, Neste has a market share of approximately [20-30%] in the market for N-butanol in the EEA territory. In addition, there are a number of important players active in the N-butanol market in the EEA territory: Celanese Chemicals Europe GmbH has [20-30%], Oxeno has [20-30%], and Oxo Chimie and BASF AG has [0-10%] respectively. The market investigation has not shown that Neste’s position will be significantly altered by means of the present merger.
24. Furthermore, Addtek International Oy Ab (“Addtek”) one of the portfolio companies in the IK 94 Fund, is a potential customer to Neste’s new development division (construction chemicals). Neste’s activities in construction chemicals represent less than [0-10%] of that market, and consequently there is no competition concern stemming from this potential vertical link.
25. With regard to the above, the proposed transaction is not susceptible to present any competitive problems on the markets concerned by the operation. Consequently, the proposed concentration does not lead to the creation or strengthening of a dominant

position as a result of which effective competition would be significantly impeded in the common market and the EEA or in a substantial part thereof.

## **V. CONCLUSION**

26. 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 Council Regulation (EEC) No 4064/89.

For the Commission,

*Signed by M. Monti*  
*Member of the Commission*