

*Case No IV/M.197 -  
SOLVAY / LAPORTE*

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

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Article 6(1)(a) INAPPLICABILITY  
Article 6(1)(b) NON-OPPOSITION  
Date: 30.04.1992

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MERGER PROCEDURE  
ARTICLE 6(1)a DECISION  
ARTICLE 6(1)b DECISION

PUBLIC VERSION

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To notifying parties

Dear Sirs,

Subject: Case No. IV/M197 - Solvay-Laporte/Interox  
Notification of 26.3.1992 pursuant to Article 4 of  
Council Regulation No. 4064/89

1. The above mentioned operation, jointly notified by Solvay S.A. and Laporte plc concerns the division of their joint venture, the Interox group of companies, between themselves.
2. After examination of the joint notification, the Commission has concluded that the division of the Interox JV represents two separate concentrations, one by Solvay and one by Laporte, for the purposes of the application of Council Regulation No. 4064/89 (the Regulation). The Solvay concentration falls within the scope of the Regulation and does not raise serious doubts as to its compatibility with the common market. The Laporte concentration does not have a community dimension and therefore does not fall within the scope of the Regulation.

I. THE PARTIES

3. Solvay is a major international chemical group concentrating on bulk chemicals with interests in five main areas: alkalis, plastics, processing, health and peroxygens (through Interox).
4. Laporte is a broadly based international chemicals group with activities in the areas of absorbents, construction chemicals, hygiene and process chemicals, metals and electronics chemicals, organic speciality chemicals and peroxygens (through Interox).

## II. THE OPERATION

5. The Interlox group of companies is a 50/50 joint venture between Solvay and Laporte except for Peroxid-Chemie GmbH, Germany, which is two-thirds owned by Solvay and one-third owned by Laporte. The JV was established on 30 June 1970 when the two parties pooled together their activities in the field of hydrogen peroxide ( $H_2O_2$ ) and various derivative products.
6. Interlox is engaged in the manufacture of hydrogen peroxide and other inorganic peroxides, sodium perborate and sodium percarbonate (together known as "persalts"), organic peroxides, and persulphates. Collectively these products form the "peroxygen" sector.
7. Under the agreement for the break-up of Interlox, Solvay will take over full control and ownership of the "non-initiator business" (mainly  $H_2O_2$  and persalts) whilst Laporte will acquire full control and ownership of the "initiator business" (organic peroxides and persulphates). This division of activities is in line with Solvay's focus on bulk chemicals and Laporte's focus on specialty chemicals.
8. At the same time that the Interlox JV was established Solvay became a major shareholder in Laporte. Immediately prior to the operation, Solvay's shareholding amounted to 24.96 per cent of Laporte's ordinary shares. The sale of the minority stake will be conducted in several stages at the end of which Solvay will cease to be an ordinary shareholder in Laporte. Laporte will thus become a fully independent company.

## III. INDEPENDENCE OF LAPORTE

9. With its 24.96% shareholding, Solvay is by far the largest single shareholder in Laporte. The second largest shareholder is an institutional investor with approximately a 6% shareholding. Laporte's shares are widely spread. The question therefore arises if Solvay could already exercise decisive influence on Laporte.
10. Although Solvay is the largest ordinary shareholder, it has no special rights attaching to its Laporte shares either through Laporte's Articles of Association or by agreement.
11. Laporte's board is composed of 10 directors. Two were either directly or indirectly linked with Solvay. The formation of Laporte's policy and competitive strategy is determined by Laporte's Executive Management Committee made up of the executive directors of Laporte. Both Solvay directors were non-executive directors and were not involved in the day to day management of Laporte.
12. Laporte directors are appointed by the annual general meeting of Laporte shareholders. The Commission has analysed the votes present or represented by proxy at the last three annual general meetings of Laporte. At these meetings Solvay would not have had more than 30 per cent of the votes present or represented.

13. Therefore, although Solvay would have been able to exercise some influence on Laporte, it nevertheless must be concluded that for the purposes of the Regulation, it did not have the possibility to exercise decisive influence within the meaning of Article 3(3). Consequently Laporte cannot be considered as being part of the Solvay group and falls to be considered as an independent undertaking.

IV. THE OPERATION CONSTITUTES TWO CONCENTRATIONS

14. The proposed operation concerns the acquisition of sole control for the production of H<sub>2</sub>O<sub>2</sub>, persalts and other inorganic peroxides by Solvay and the acquisition of sole control for the production of organic peroxides and persulphates by Laporte. The acquisition of sole as opposed to joint control represents a change in the quality of decisive influence exercised by the acquiring party and brings about a lasting change in the structure of the undertakings concerned<sup>1)</sup>. Therefore the acquisition of sole control gives rise to a concentration within the meaning of Article 3(1)b of the Regulation.
15. Since the operation is governed by one Master Agreement, relates to the division of a single undertaking (i.e. the Interlox JV) and involves a close inter-relationship between the products and activities concerned, the parties have submitted a joint notification covering the whole operation.
16. The Commission recognises these facts. Nevertheless, the economic and legal result of the operation is that two independent undertakings will each move from a position of joint to sole control for two different sets of specific assets and products.
17. The fact that both concentrations arise out of one Master Agreement and are considered as inter-conditional between the parties is not sufficient to allow the operation to be treated as one single concentration.
18. Furthermore, the fact that the assets and products concerned derive from an existing common joint venture, is not sufficient to reverse this analysis since in theory it would be feasible to transfer each set of assets and products to separate undertakings unrelated to the JV's parents. In such a hypothesis two separate concentrations would arise, even though both transfers could not be effected unless both parents agreed.
19. Lastly, there may be situations where, notwithstanding the above analysis, the division of an undertaking between its owners could give rise to an operation that might be considered as one whole. This could for example be the case where exogeneous constraints falling outside the scope of the control of the owners, are imposed on the parties or products concerned and which necessarily confer a unity of character on the division<sup>2)</sup>. In the present case there are no such exogeneous constraints; only a single agreement between the two parents. Consequently, the division must be considered as giving rise to two separate concentrations; one by Solvay, one by Laporte.

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<sup>1)</sup> Cf. decision in case IV/M023, ICI/Tioxide, 28.11.90.

<sup>2)</sup> Cf. decision in case IV/M.138, CAMPSA, 19.12.91.

V. COMMUNITY DIMENSION

The Laporte concentration

20. The Laporte concentration for the initiators business does not have a Community dimension. The Laporte group had a worldwide turnover of 878 MECU in 1991; the worldwide turnover of Interlox's initiator business in 1990 (the most recently available year) was [...] <sup>a)</sup>. The combined worldwide turnover of the undertakings concerned does not exceed the threshold of 5000 MECU as laid down in Article 1(2)a of the Regulation. Therefore this concentration does not fall within the scope of the Regulation.

The Solvay concentration

21. The Solvay group, excluding Interlox, had a worldwide turnover of 5534 MECU in 1990 (the most recently available year). The worldwide turnover of Interlox's non-initiator business in 1990 was [...] <sup>b)</sup>. The aggregate Community-wide turnover of both the Solvay group and Interlox's non-initiator business exceeded 250 MECU. The parties concerned do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The concentration has therefore a Community dimension and its compatibility with the common market falls to be assessed.

VI. COMPATIBILITY WITH THE COMMON MARKET

22. In the chemical industry, the physical production process is complicated and inter-linked. The specific chemical products produced at any stage of an overall productive process give rise to outputs which are in turn used as inputs in subsequent productive processes. Consequently, any point in the production chain, when considered in isolation, can give rise to many upstream and/or downstream product links.
23. Another feature of the chemical industry is that often a large part of production is retained in house for downstream use (i.e. captive production). That part of production sold to outside parties gives rise to the free market.
24. Since there is no gain in market share brought about by the concentration, there are no horizontally affected markets directly created although there is a qualitative change in the degree of control exercised which requires to be assessed. On the other hand given the nature of the chemical business there are a large number of potentially vertically affected markets.

A. HYDROGEN PEROXIDE

**Relevant product market**

25. Hydrogen peroxide is a powerful oxidant with applications in the following sectors: pulp and paper, textiles, chemical synthesis, disinfection, metal extraction and sewage treatment. It is also the raw material from which other peroxygen products are made.

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a) less than 250 MECU  
b) more than 250 MECU

Hydrogen peroxide is manufactured through an autoxidation process using hydrogen, oxygen (from the air) and anthraquinone as raw materials. Autoxidation involves the catalytic reduction (using nickel or palladium catalyst) of anthraquinone to anthraquinol followed by oxidation with formation of hydrogen peroxide as a by-product. The hydrogen peroxide is then extracted from the resulting organics by water and concentrated for commercial use.

**Relevant geographic market**

26. The parties submit that the relevant geographic market for H<sub>2</sub>O<sub>2</sub> is Western Europe. According to the parties prices are broadly comparable and similar types of customer exist with a broad spectrum of applications. Because transport costs are high, producers of H<sub>2</sub>O<sub>2</sub> have manufacturing sites across Europe. Moreover, customers in Europe can place orders with broadly the same producers.
27. In a 1984 decision<sup>3)</sup> the Commission considered that the Community market for H<sub>2</sub>O<sub>2</sub> was strictly divided on national lines with very considerable price differences. The Commission has therefore conducted a survey with major producers and users of H<sub>2</sub>O<sub>2</sub> in order to assess the current market situation.
28. The results of the survey are inconclusive:
  - a) There are significant differences in free market shares at the Member State level. In general domestic producers have much higher market shares in their home country. This may be explained by high transport costs. With the exception of the UK and Ireland there would appear to be at least two or three competitors in all Member States with significant market share.
  - b) There would still appear to be some differences in price by Member State. However, at the same time prices are strongly dependent upon the volume purchased. [...]°). Based on the survey replies provided there would seem to be a trend towards a levelling of prices and the emergence of a Community wide market for large purchasers such as multi-nationals in the pulp and paper, and chemical industry; whereas for textile and smaller users as well as resellers, the market would still seem to be largely national.
  - c) The available trade statistics would tend to indicate a certain degree of imports and exports of H<sub>2</sub>O<sub>2</sub> in the Community, particularly where plants are located in neighbouring countries, eg. from Belgium to Germany, or from Austria to Germany. However, the interpretation of the importance of these figures for the free market is difficult since no distinction is made between free market trade and captive intra company supplies across national boundaries. Furthermore, H<sub>2</sub>O<sub>2</sub> is supplied mixed with water at various concentrations ranging from 27.5 to 100 per cent strength. This may tend to significantly overstate the true trade figures.

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<sup>3)</sup> OJ L 35, 7.2.85.

<sup>c)</sup> Deleted for publication

29. For the purposes of this decision it is not necessary to decide whether the relevant geographic market for H<sub>2</sub>O<sub>2</sub> is Community wide or national. Even if the latter approach is taken this does not change the assessment since the operation will not lead to the creation or strengthening of a dominant position.

### Assessment

#### Horizontal aspects

30. The proposed concentration does not bring about any increase in Interlox's free market share. At the Community level Interlox is the market leader with a [...] <sup>1)</sup> market share, followed by Degussa [...] <sup>2)</sup>, Oxysynthese [...] <sup>3)</sup>, FMC and Montefluos (each with [...] <sup>4)</sup>).
31. At the Member State level Interlox is the only producer both widely and strongly present throughout the Community. It is the market leader in the UK and Ireland [...] <sup>5)</sup>, Portugal [...] <sup>5)</sup>, Benelux [...] <sup>5)</sup>, Italy [...] <sup>1)</sup> and Greece [...] <sup>1)</sup>. In other Member States it occupies the number two position, e.g. Germany: Degussa [...] <sup>1)</sup>, Interlox [...] <sup>6)</sup>; Spain: FMC [...] <sup>1)</sup>, Interlox [...] <sup>1)</sup>; France: Oxysynthese [...] <sup>5)</sup>, Interlox [...] <sup>2)</sup>; Denmark: EKA [...] <sup>6)</sup>, Interlox [...] <sup>6)</sup>. With the exception of the UK and Irish market there exists at least one or two competitors in all Member States with significant market shares.
32. As regards the UK market situation, there exists only 1 production plant in the UK for H<sub>2</sub>O<sub>2</sub>. This plant is already owned by Interlox. The plant has sufficient capacity to satisfy estimated UK demand. This feature coupled with the fact that H<sub>2</sub>O<sub>2</sub> is hazardous and expensive to transport, an aspect which may be aggravated by the UK's island nature, may explain Interlox's very high UK market share. However, this is a structural feature of the UK market which remains unchanged by the present concentration.
33. The question also arises if Solvay's sole control will now allow it to use its considerable financial power and technical resources for H<sub>2</sub>O<sub>2</sub> production unconstrained by possibly different Laporte interests. This does not seem likely.
- a) With regard to financial power, firstly, Solvay and Interlox's competitors in the peroxygen sector are financially strong in their own right or have financially strong shareholders or parent companies. Secondly, Interlox is already 50 per cent owned by Solvay and furthermore, Solvay had a major shareholding in Laporte. Consequently, there should already have been considerable financial interests in Common as regards Interlox. This would seem to be reflected by the fact that, although Interlox was designed to be a 50/50 JV, the Interlox Joint Venture Agreement dated 30 June 1972, provides that where only

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1) less than 50%  
2) less than 30%  
3) less than 20%  
4) less than 10%  
5) more than 50%  
6) less than 40%

one parent wishes to invest in a new Interlox project that party can provide all the necessary investment required alone.

b) With regard to technical resources, the required technology for the construction of a H<sub>2</sub>O<sub>2</sub> plant is available in the market from companies such as Ericsson Engineering Services (Sweden) and APEL (USA).

34. Therefore, it must be concluded that the present concentration does not create or strengthen a dominant position for the production of H<sub>2</sub>O<sub>2</sub> as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

#### Vertical aspects

35. As to the vertical aspects, there are no significant foreclosure effects, if any.

36. Upstream, hydrogen, anthraquinone and either a nickel or a palladium catalyst is required for the production of H<sub>2</sub>O<sub>2</sub>. Most large chemical companies manufacture hydrogen for captive use, particularly for H<sub>2</sub>O<sub>2</sub> production so that only a relatively small quantity of hydrogen is sold on the "free" market. It is estimated that only approximately 0.75% of total hydrogen production in the EEC corresponds to sales on the free market. Consequently, the concept of an upstream market for the hydrogen used in H<sub>2</sub>O<sub>2</sub> production has little meaning. Anthraquinone is sold in large quantities by BASF and Mitsui. Interlox is the only producer of H<sub>2</sub>O<sub>2</sub> using a nickel catalyst which Solvay manufactures. Other producers use a palladium catalyst. [...]<sup>(c)</sup>

37. Downstream, the primary products downstream are persalts, other inorganic peroxides and organic peroxides. The first two are further analysed below. With respect to organic peroxides, Interlox's current production will be solely acquired by Laporte, which will become a fully independent company. Consequently on the demand side after the transitional period there will be an increase in the free market for H<sub>2</sub>O<sub>2</sub> required for organic peroxide production and there are no adverse downstream effects.

#### B. PERSALTS

##### **Relevant product market**

38. According to the parties persalts form a product group. Persalts are derived from hydrogen peroxide which can be divided into two categories: sodium perborate ("PBS"), which accounts for approximately 90% of all persalts production, and sodium percarbonate ("PCS"). Washing powder detergents represent the only, but nevertheless significant, use of persalts. Their incorporation in a washing powder enables the hydrogen peroxide (which acts as a bleaching agent) to be released into the water. Other washing powder ingredients include zeolites, activators, enzymes, caustic soda and silicates.



39. PBS consists of two virtually identical substances: sodium perborate monohydrate ("PBS1") and sodium perborate tetrahydrate ("PBS4").
- a) PBS4 is manufactured by reacting hydrogen peroxide with sodium metaborate under aqueous conditions followed by crystallisation, separation by centrifuge and fluid bed drying. Sodium metaborate is prepared by the reaction of caustic soda with boron. PBS1 is manufactured by further fluid bed drying of PBS4 to remove the water of crystallisation. Approximately 1.65 tonnes of PBS4 are used to make 1 tonne of PBS1.
- b) PCS is produced by reacting hydrogen peroxide with soda ash followed by crystallisation, separation by centrifuge and fluid bed drying.

#### **Relevant geographic market**

40. According to the parties the relevant geographic market for persalts is Western Europe. Washing powder detergents represent the only significant use of persalts. Accordingly, the geographic scope of the persalts market is determined by the detergent market which in turn is determined by clothes washing habits. Washing habits in Western Europe are traditionally different from those in the USA and Japan.
41. In Western Europe (which accounts for the major part of world production and consumption of PBS) customers are few in number and consist mainly of the multinational detergent and washing powder producers (e.g. Procter & Gamble, Lever, Gruppo Benckiser/Mira Lanza, Henkel). Interox's three largest customers have each established a centralized purchasing policy covering all their European plants.
42. Almost all major persalts producers have significant market shares in at least several Member States and particularly in their home Member State. There is a considerable degree of market interpenetration. Prices, as submitted by the parties, show little variation between Member States. Imports of PBS into Western Europe (EEC + EFTA) amount to only 3%. There is a tariff of approximately 7% (PBS 6.9%, PCS 6.6%) for importation into the EEC.
43. In this light it is reasonable to accept that the relevant geographic market is at least Community-wide.

#### **Assessment**

##### Horizontal aspects

44. Although Interox is the Community market leader with a free market share of [...] <sup>6)</sup>, the proposed concentration does not bring about any increase in market share. There are other important market players some of which have substantial market shares, e.g. Degussa [...] <sup>2)</sup>, Montedison [...] <sup>3)</sup>, Oxysynthese

[...]³), ICI [...]⁴), Foret [...]⁴), Henkel [...]⁴) and Dupont [...]⁴). On the demand side there is considerable bargaining power arising from the centralised purchasing policies of the multinational detergent producers.

#### Vertical aspects

45. As regards H<sub>2</sub>O<sub>2</sub> the majority of persalts producers are vertically integrated and nearly all are manufacturers of H<sub>2</sub>O<sub>2</sub>. As regards other upstream requirements Solvay has important market shares for both soda ash and caustic soda. The concentration does not lead to market foreclosure, because these inputs will still remain available from alternative producers with significant market shares, e.g. soda ash: ICI, Rhône Poulenc, AKZO and FMC; caustic soda: Atochem, ICI, Tessenderlo, AKZO, Enichem, Bayer, BASF, Hoechst and Dow. All have EC free market shares above 5 per cent. Downstream there are no vertically affected markets.
46. With regard to persalts, it can therefore be concluded that the notified concentration does not create nor strengthen a dominant position as a result of which effective competition would be significantly impeded in the common market or in a substantial part of it.

#### C. OTHER PEROXYGEN PRODUCTS

47. H<sub>2</sub>O<sub>2</sub> is used downstream in the production of Caro's acid, Urea peroxide, caprolactone, other inorganic peroxides (e.g. calcium peroxide either in powder or granulated form, magnesium peroxide, zinc peroxide), peracetic acid and disinfectants. Solvay will acquire sole control for the Interlox production of all of these chemicals. As stated before there is no horizontal increase in market share. The only possible overlap with existing Solvay products is in the areas of disinfectants, bleaching agents and highly purified H<sub>2</sub>O<sub>2</sub> used for the manufacture of microchips. On the basis of the information available to the Commission, the acquisition of sole control for the above peroxygen products, these minor overlaps and the possible vertical aspects are insignificant in their importance, and there is thus no significant structural impact on these markets.

#### VII. ANCILLARY RESTRICTIONS

48. Article 8(2) of the Regulation states that "the decision declaring the concentration compatible shall also cover restrictions directly related and necessary to the implementation of the concentration". In this light restrictions ancillary to the Solvay concentration fall to be considered by the Commission.
49. Under Clause 16.1 of the Master Agreement (and Section 9.13 of the German Master Agreement) Laporte undertakes not to compete with the Interlox non-initiators business for a period of [...]⁴). Clause 16.2(A) of the Master Agreement (and paragraph 9.15 of the German Master Agreement) restricts Laporte from soliciting former Interlox employees from Solvay for a period of [...]⁴). Clause 16.2(B) of the Master Agreement restricts Laporte from soliciting former customers

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⁴) For a period which does not exceed five years.

from Solvay (except as customers for the Interlox business being acquired by Laporte) for [...]d).

In order to take over fully the value of the assets transferred, the Commission recognises that the acquirer needs sufficient time to be able to benefit from some protection against competitive acts of the vendor.

Under an Administration Services Agreement Laporte is to provide various central administration services to the UK Interlox business being acquired by Solvay until [...]d). Under a German Lease and Services Agreement Laporte is to provide similar administrative services in Germany to the Interlox business being acquired by Solvay until [...]d).

The above restrictions, all of which are limited to an acceptable duration, can be considered as directly related to the concentration and necessary for its implementation.

50. Under Clause 14.2(G) of the Master Agreement (and under paragraph 2(G) of Annex 5 to Section 5.1 of the Einbringungsvereinbarung) Laporte agrees, on an indefinite basis, not to disclose to third parties or use to the detriment of Solvay any commercial information and technical know-how they have about the business being acquired by Solvay to the extent that this information or know-how is secret to the parties.

As regards the commercial information, defined by the parties as including customer details, price and quantity information, the Commission cannot accept the indefinite duration of this restriction. This would have the result of effectively prolonging the protection of the acquirer from competitive acts of the vendor beyond the [...]d) period of the non-competition clause. In the absence of particular circumstances, objectively justifying such a prolongation, this restriction should be limited to [...]d).

As regards technical know-how, defined by the parties as including manufacturing processes, product development and applications, the indefinite duration of this restriction is acceptable since this know-how is transferred to Solvay along with Interlox's assets. Laporte, after the expiry of the [...]d) non-competition clause, may re-enter the market with alternative technology or know-how.

51. Under the HP Production Agreement Laporte will supply certain services to Solvay in relation to the production of H<sub>2</sub>O<sub>2</sub> products at the Interlox hydrogen peroxide facilities (to be acquired by Solvay) and which are adjacent to Interlox's organic peroxide facilities (to be acquired by Laporte) on the site at Höllriegelskreuth. This agreement is for a fixed duration of [...]d), with an option for Solvay to extend for up to a further four years.

Under the H<sub>2</sub>O<sub>2</sub> Supply Agreement Solvay agrees to supply and Laporte agrees to purchase H<sub>2</sub>O<sub>2</sub> for use in the Interlox organic peroxide facilities at Höllriegelskreuth and Warrington (being acquired by Laporte) which are adjacent to the Interlox H<sub>2</sub>O<sub>2</sub> facilities on these sites (being acquired by Solvay). This agreement is terminable on [...]d) notice given by Laporte (to

expire after [...]d)), it is also terminable by Solvay on [...]d) notice [...]c).

The Commission acknowledges that in order to make possible the break-up of the JV and the partial transfer of the assets to the acquirer under reasonable conditions, it is often necessary to maintain, at least for a transitional period, purchase and supply links between the vendor and the acquirer.

However, the parties have not put forward convincing arguments justifying the objective need for an agreement of a potentially indefinite duration. It is therefore considered that the period necessary for the replacement of the relationship of dependency by autonomy in the market should be limited to [...]d).

52. Therefore all the above restrictions are covered by the present decision to the extent described above.
53. The parties have proposed that restrictions on the conduct of Interlox's business which only apply during the period prior to completion also be considered as ancillary restrictions. However, in the light of point 4, 2nd para of the Commission's notice on ancillary restrictions these restrictions are to be excluded.

#### VIII FINAL ASSESSMENT

54. Based upon the above findings, the Commission has come to the conclusion that the proposed transaction does not create or strengthen a dominant position which raises serious doubts as to its compatibility with the common market.

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55. For the above reasons, the Commission has decided:
- a) that the acquisition by Laporte of sole control of Interlox's initiator business does not fall within the scope of the Regulation
  - b) that the acquisition by Solvay of sole control of Interlox's non-initiator business is compatible with the common market.

This decision is adopted in application of Article 6 paragraph 1(a) and (b) of the Merger Regulation. The present decision is without prejudice to the possible application of Community competition law to the former Interlox joint venture companies with shareholders other than Solvay and Laporte.

For the Commission