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Case No COMP/M.2092 - REPSOL QUIMICA / BOREALIS / JV

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 19/12/2000

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 19.12.2000
SG(2000)/D 109361

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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 COMP/M. 2092 - REPSOL QUIMICA/BOREALIS/JV
Notification of 17.11.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 17.11.2000, the Commission received a notification of a proposed concentration by which Repsol Quimica S.A. ("Repsol"), belonging to the Repsol YPE group, based in Spain, and the Danish company Borealis A/S ("Borealis"), acquire joint control in a newly created company constituting a joint venture ("Newco").

2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No 4064/89 (the Merger Regulation) and does not raise serious doubts as to its compatibility with the common market and with the EEA Agreement.

I. THE PARTIES' ACTIVITIES AND THE OPERATION

3. Repsol YPE group is an integrated oil and gas international group engaged in all aspects of petroleum business. The Spanish Government privatised the Repsol group in April 1997.

4. Borealis has its head office in Denmark and is active in the production of thermoplastics and petrochemicals feedstock. The company is currently jointly owned by the Norwegian company Statoil (50%), the Austrian gas and oil company OMV (25%) and the International Petroleum Investment Company of Abu Dhabi (25%).

5. The notification concerns an agreement between Repsol and Borealis to establish a 50/50 jointly controlled full-function company, Newco, which will operate on the market performing on a lasting basis all the functions of an autonomous economic entity. It will have all the management, staff, finance, production and sales facilities to conduct its business on a lasting basis. It is expected that Newco will have assets of a value of EUR […] million and will employ over a thousand people. All commercial relations between the parents and the joint venture will be in normal commercial conditions and the parents will treat the joint venture at arm's length, […].

6. Repsol contributes to Newco all its business for the production and sales of polyolefins in Europe, which includes its plants in Tarragona (Spain) and Puertollano (Ciudad Real, Spain) as well as its 50% participation in the polyethylene production joint venture, Transformadora de Etileno, A.I.E.("TDE"), with Dow Chemicals in Tarragona and its 50% participation in the polypropylene production joint venture with Targor in Tarragona, Transformadora de Propylene, A.I.E.("TDP"). Each of the parties in TDE and TDP has the right to use 50% of the plant's running time. Both joint ventures, TDE and TDP, are limited to production and are not involved in any marketing or sales activities.

7. Borealis contributes its plants in Portugal (Sines), for the production of olefins and polyolefins. It retains its non-Iberian production assets for both olefins and polyolefins and its sales activities.

8. Newco will be jointly controlled by Repsol and Borealis. According with the Master Agreement, each parent nominates three Directors to the Boards of Directors. The important business decisions such as the approval of the annual budget and business plan require the approval of at least one Director proposed by each of the parties.

9. Therefore, the operation is a concentration within the meaning of Article 3 of the Merger Regulation.

II. COMMUNITY DIMENSION

10. Borealis and Repsol group have a combined aggregate worldwide turnover in excess of EUR 5,000 million (Borealis, EUR 2,987 million; and Repsol, EUR 26,295 million). Each of them has a Community-wide turnover in excess of EUR 250 million (Borealis, EUR 2,239 million; and Repsol, EUR 18,093 million), but 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 within the meaning of Article 1(2) of the Council Regulation.

III. COMPETITIVE ASSESSMENT

A. Relevant product market

11. Newco will own all of the parties' facilities for the production of polyolefins on the Iberian Peninsula, as well as Borealis's assets at Sines (Portugal) for the production of olefins. Newco’s main business will be the production of polyolefins. It will be involved to a lesser extent in the production of olefins.

12. The notifying parties state that there are relevant product markets for <u>ethylene</u> and <u>propylene</u> (olefins) and for <u>high density polyethylene</u> (HDPE), <u>low density polyethylene</u> (LDPE), <u>polypropylene</u> (PP) and <u>polypropylene compounds</u> (PPC) (polyolefins). This approach is confirmed by previous Commission decisions [1].

13. Ethylene and propylene are base chemicals obtained through the cracking of naphtha or through the dehydrogenation of propane. Ethylene and propylene, are the commodity feedstocks for the polymerisation processes to produce HDPE and LDPE on the one hand

1 Case No IV/M.361 - Neste/Statoil, point 18 of the Commission decision of 17.02.1994 and Case No IV/M.550- Union Carbide/Enichem, point 25 of the Commission decision of 13.03.1995.

and PP on the other. These are common thermoplastics used as base material for the manufacture of a wide variety of household and industrial goods.

14. A large portion of the Western European production of ethylene (a highly flammable reactive gas difficult to transport) is for captive use in integrated production complexes. Most polyolefin producers are vertically integrated into olefins. More than 92% of Borealis' ethylene production is consumed captively in the production of polyolefins and Repsol consumed captively 72% of its ethylene production. Nevertheless, ethylene is widely traded at international level. The principal means of transporting ethylene are pipelines and special ships for liquefied gas.

15. It is not necessary to further delineate the relevant product markets because, in all alternative market definitions considered, effective competition would not be significantly impeded in the EEA or any substantial part of that area.

B. Relevant geographic market

16. The parties state for several reasons (prices, cost of transport, import/exports) that the geographic market for propylene and polyolefins products is Western Europe. This conclusion has also been confirmed in previous decisions[2].

17. The parties state that for ethylene, the relevant geographic market is also Western Europe. The prices for contract supplies (determined in Europe on a quarterly basis) and spot supplies are normally published. The ethylene produced in Spain and Portugal that is not used locally (as mentioned above a large portion of ethylene production is used captively in integrated production complexes) is transported by specialised ships (there are no ethylene pipelines in the Iberian Peninsula) to other areas. Ethylene can therefore be transported to and used in any location that can be reached by these specialised ships. Furthermore, Dow and Repsol import currently ethylene for the production of polyethylene in Tarragona (Spain) from Mexico, Libya and Italy, and expect to import […] kt in year 2000 (Iberian merchant demand in 1999 is estimated in […] kt). This would indicate that the relevant geographic market for ethylene is at least the EU and possibly wider. If, on the other hand the relevant geographic market were to be considered to be local then no competition concerns arise since there would be no overlap in the Sines (Portugal), Puertollano (Ciudad Real, Spain) or Tarragona (Spain) areas. It is not necessary to further define the relevant geographic market because in both alternatives the operation will not cause competition problems.

C. Assessment

18. According to the parties <u>the market shares of merchant sales for 1999</u>, in Western Europe, arising from the operation were:

- <u>Combined market</u> share <u>for ethylene [less than 15%]</u>. This total is made up of Newco […], Repsol […], Borealis […] and OMV, one of the parents of Borealis, […]

[2] Case No COMP/M. 1751-SHELL/BASF decision of 29.03.2000, points 14, 27, 29 and 37. Case No. COMP/M.1671 – Dow /UCC decision of 3 May 2000, point 46-48.

- Combined market share for propylene [less than 5]%. Newco […] and Borealis […]. Repsol had no merchant sales of propylene and neither had OMV.

19. For ethylene the combined market share of all the parties selling ethylene on the merchant market is only [less than 15]% which is not sufficient to raise questions of co-ordination. The question does not arise in relation to propylene and products mentioned below as only Borealis will remain active on the market.

20. In relation to polyolefins and PP compounds the situation may be summarised as follows:

- For HDPE [15-25]9%. Newco […] (ex-Repsol […] and ex-Borealis […]) and Borealis […].

- For LDPE [15-25]%. Newco […] (ex-Repsol […], ex Borealis […]) and Borealis […]).

- For PP [15-25]%. Newco […] (all from Repsol) and Borealis […].

- For PP Compounds [15-25]%. Newco […] (all from Repsol) and Borealis […].

21. The degree of concentration is not high enough to raise concerns in any market. There are a significant number of strong rivals in all the marked considered.

IV. ANCILLARY RESTRICTIONS

22. Borealis currently produces PE-100 at the Sines plant using an its own technology. Borealis needs the PE-100 output of the Sines plant pending the construction of its own PE-100 facilities elsewhere. [Supply agreement]. The Borealis technology, will not be transferred to Newco.

23. The notifying parties submit that this agreement […] is ancillary for the following reasons. Firstly, Borealis has an ongoing need for pipe-grade PE 100 for which it cannot source elsewhere while it builds its new facility. Secondly, the […] supply agreement does not effect any third parties because Borealis currently produces PE 100 using its proprietary technology for its own use. This situation will be unchanged except that Newco will produce the PE 100 on behalf of Borealis. Thirdly, the supply agreement does not prevent Newco from using any other technology to produce PE 100.

24. To the extent that the supply agreement constitutes a restriction to competition it can, for the reasons set out above, be considered as ancillary as it is an integral part of the operation.

V. CONCLUSION

25. 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,

Mario MONTI
Member of the Commission