

***Case No COMP/M.2128 -  
ABB LUMMUS /  
ENGELHARD /  
EQUISTAR / NOVOLEN***

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: 25/09/2000

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

Brussels, 25.09.2000

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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.2128 – ABB LUMMUS/ENGELHARD/EQUISTAR NOVOLEN  
Notification of 24.08.2000 pursuant to Article 4 of Council Regulation No 4064/89

1. On 24.08.2000 the Commission received a notification of a proposed concentration by which ABB Lummus and Equistar will acquire joint control of the Novolen polypropylene technology licensing business currently owned by Targor.
2. After examination of the notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EC) N° 4064/89<sup>1</sup> the Merger Regulation and that the concentration does not raise serious doubts as to its compatibility with the common market and with the EEA agreement.

**I. THE PARTIES**

3. **ABB Lummus Global Inc** (“ABB Lummus”) is part of the ABB Group (“ABB”), which is an engineering conglomerate active in automation, transmission and distribution of power, oil, gas and petrochemicals and contracting for the construction sector worldwide. In 1999, ABB employed 165,000 people and was operational in 100 countries.
4. **Equistar Chemicals LP** (“Equistar”) is an American company active in the production of ethylene, polyethylene and polypropylene (“PP”). All its production plants are in the US. Equistar is owned by Lyondell (41%), Millennium (29.5%) and Occidental (29.5%).

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<sup>1</sup> OJ L 395, 30.12.089 p.1; corrigendum OJ L 257, 21.9.1990,p.13; last amended by Regulation (EC) N° 1310/97 (OJ L 40, 13.2.01998, p. 17).

5. The **Novolen Technology Licensing Business** (“Novolen”) is currently owned by Targor, which is in turn owned by BASF. Novolen is active in the licensing of PP technology. Novolen is being sold by BASF in order to satisfy part of the package of remedies in case COMP/M.1751 BASF/Shell/JV – Project Nicole.

## **II. THE OPERATION**

6. The business is being sold under the Commitments submitted by BASF/Targor in Case COMP/M.1751, according to which BASF undertook to divest the PP technology business run by Targor. ABB Lummus and Equistar are acquiring one part of that business (the technology licensing business), with Engelhard separately acquiring the catalysts plant which produces catalysts to be used in PP production<sup>2</sup>. Following the acquisition, Engelhard will conclude a [...] partnership agreement according to which Engelhard will be the exclusive supplier of the BASF/Targor PP catalysts to the ABB Lummus/ Equistar joint venture.
7. The business being sold by BASF/Targor to ABB Lummus / Equistar does not represent a corporate entity, but consists of assets (principally intangible assets) related to PP technology licensing. The parties have formed a joint venture company, Novolen Technology Holdings C.V. for the specific purpose of making this acquisition. The joint venture company will be [...] owned by ABB Lummus and [...] owned by Equistar.

## **III. CONCENTRATION**

8. The transaction involves the acquisition of joint control by ABB Lummus and Equistar of Novolen. Although Equistar will be a minority shareholder in the joint venture, it will hold a number of veto rights over the strategic commercial decisions of the joint venture company. These veto rights give Equistar joint control of the joint venture. The business being acquired will have a dedicated management and will perform on a lasting basis all the functions of an autonomous economic entity. It is therefore a full function joint venture within the meaning of the Merger Regulation and the transaction therefore constitutes a concentration within the meaning of Article 3(1)b of the Merger Regulation.

## **IV. COMMUNITY DIMENSION**

9. The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 billion<sup>3</sup> [ABB EUR [...]; Equistar EUR [...]]. Each of ABB and Equistar have a Community-wide turnover in excess of EUR 250 million [ABB EUR [...]; Equistar EUR [...]] 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.

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<sup>2</sup> The acquisition by Engelhard of the catalyst plant is not an operation with a Community dimension.

<sup>3</sup> Turnover calculated in accordance with Article 5(1) of the Merger Regulation and the Commission Notice on the calculation of turnover (OJ C66, 2.3.1998, p25). To the extent that figures include turnover for the period before 1.1.1999, they are calculated on the basis of average ECU exchange rates and translated into EUR on a one-for-one basis. ABB’s turnover is that of the ABB Group; Equistar’s turnover [...].

## V. COMPETITIVE ASSESSMENT

10. The Commission held in previous decisions<sup>4</sup> that the relevant market for PP technology is the worldwide market for the licensing of advanced process technology plus catalyst, together referred to as the market for “PP technology package licensing”. The joint venture company will be active in part of this market, namely PP technology licensing, and will have an agreement with Engelhard according to which Engelhard will be the exclusive supplier of PP catalysts to Novolen.
11. However, for the purposes of this procedure, it is not necessary to reach any firm conclusions about the precise boundaries of the relevant market since neither ABB Lummus nor Equistar are currently active in the PP technology licensing. There is therefore no overlap between the parent companies and Novolen, and the joint venture company will simply inherit BASF/Targor’s market share of [5-15]% and the concentration will not create or strengthen any dominant positions.

## VI. CONCLUSION

12. 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

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<sup>4</sup> Case IV/M.269 – *Shell/Montecatini*, 08.06.1994; Case COMP/M.1751 – *Shell/BASF/JV – Project Nicole*