EN

Case No COMP/M.2231 - HUNTSMAN INTERNATONAL / ALBRIGHT & WILSON SURFACTANTS EUROPE

Only the English text is available and authentic.

REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(1)(b) NON-OPPOSITION
Date: 30/03/2001

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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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, 30.03.2001

PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)(b) DECISION

To the notifying parties

Dear Sir/Madam,

Subject: Case No COMP/M.2231-Huntsman International / Albright & Wilson Surfactants Europe
Notification of 01.03.2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 01.03.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 by which the undertaking Huntsman International LLC acquires within the meaning of Article 3(1)(b) of the Council Regulation control, by way of purchase of assets and shares, of the surfactants business (Albright & Wilson Surfactants Europe [A&WSE]) of Albright & Wilson Limited. Albright & Wilson had been acquired in March 2000 by Rhodia S.A[1].

2. Huntsman and ICI announced 2 November 2000 that Huntsman Corporation will acquire ICI's 30% share of Huntsman International Holdings, thus acquiring sole control over this undertaking. This transaction is expected to be completed by mid 2001.

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

I. THE PARTIES

4. Huntsman International is a manufacturer of a wide variety of commodity and specialty chemicals through the following principal businesses: (a) polyurethane chemicals (upstream feedstocks and intermediates, thermoplastic polyurethanes); (b) petrochemicals (olefins, aromatics); (c) titanium dioxide; and (d) propylene oxide / MTBE. Huntsman International is a wholly-owned subsidiary of Huntsman International Holdings LLC, which is a joint venture owned 60% indirectly by the Huntsman Corporation, 30% indirectly by the group Imperial Chemical Industries PLC (ICI) and the remaining 10% by various private equity investors.

[1] Case No IV/M.1517 - Rhodia / Donau Chemie / Albright & Wilson.

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5. A&WSE constitutes the European surfactants business of Albright & Wilson Limited. A&WSE was established in March 2000 as a business enterprise within the Consumer Specialties Division of Rhodia. A&WSE produces and sells in Europe all four families of surface active agents: (a) anionic surfactants; (b) non-ionic surfactants; (c) cationic surfactants; and (d) amphoteric surfactants. A&WSE surfactants are primarily used in consumer detergent and toiletry products where A&WSE offers a complete range of mainstream surfactants, together with a wide range of mild surfactants and specialty formulations for baby shampoos and other personal care applications. A&WSE is also a major producer of powder and liquid laundry detergents and other liquid formulations. Furthermore, A&WSE offers a wide range of surfactants and formulated speciality products for industrial applications such as leather and textile treatment, foundry and construction, agrochemicals, polymers and coatings.

6. ICI is engaged in the manufacture and sale worldwide of coatings, specialty chemicals, materials and industrial chemicals. ICI is active in the surfactants market through its Uniquema division, which was launched in 1999 and brought together ICI's interests in surfactants, oleochemicals, lubricants and other specialty chemicals. Uniquema's main markets are personal and healthcare, agrochemicals, polymers, lubricants, textiles and coatings. ICI owns a 30% interest in Huntsman International Holdings and is deemed to exercise joint control over this undertaking given the unilateral veto rights ICI has over Huntsman International Holdings' budget and business plan.

II. THE OPERATION

7. Huntsman International will acquire the European surfactants business (A&WSE) of Albright & Wilson Limited. Specifically, Huntsman International will acquire the totality of the shares of several Albright & Wilson subsidiaries located in Italy, Spain and France, 30% of the shares of the undertaking Sintesi Srl, the assets (including production facilities) which make up the UK surfactants business of Albright & Wilson, and the assets of certain overseas sales offices to the extent that they relate to the business of A&WSE. As a result, in addition to sales and marketing capabilities, Huntsman International will acquire surfactants production sites located in the UK, France, Spain and Italy.

III. CONCENTRATION

8. The operation is a concentration within the meaning of Article 3(1)b of the Merger Regulation whereby Huntsman International acquires control of A&WSE. A&WSE will be jointly controlled by the Huntsman and ICI groups, through their joint venture Huntsman International Holdings.

IV. COMMUNITY DIMENSION

9. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion (Huntsman: € […] million; ICI: € 10 913 million; A&WSE: € […] million)[2]. Each of these undertakings have a Community-wide turnover in excess of € 250 million (Huntsman: € […] million; A&WSE: € […] million; ICI: € […] million[3]). However, they do not achieve more than two-thirds of their aggregate Community-wide

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[2] 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.

[3] Estimated figure.

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

V. COMPETITIVE ASSESSMENT

A. Relevant product markets

1. Surfactants

10. Surface active agents (surfactants) are substances that reduce the surface tension of a solution so that it can spread and wet surfaces more effectively. A surfactant is an organic compound formed by combining in one molecule both a water insoluble (hydrophobic) component and a water soluble (hydrophilic) component. Surfactants are employed in the consumer goods sector as detergents and in the industrial sector as processing aids, where their physical properties (foaming regulators, wetting, emulsification, solubilisation, dispersion, etc) are used to facilitate processing. Surfactants can be either petroleum-based products or can be made from natural fats and oils (oleo-based surfactants). The major petroleum feedstocks are ethylene and n-parafins. Palm oil, palm kernel oil, coconut oil and tallow fat are the most commonly used oils and fats. New surfactants can now also be sugar-based. Surfactants are mainly produced either by way of sulfonation or ethoxylation of the respective raw materials. Other manufacturing processes include various non-specific organic synthesis reactions like esterification, hydrogenation and hydrolysis.

11. The parties have identified four relevant product markets within the surfactants sector, in line with previous Commission's Decisions[4]. These relevant markets are the following: (1) anionic surfactants; (2) non-ionic surfactants; (3) cationic surfactants; (4) amphoteric surfactants. The distinction is based on the ionic (electrical charge) properties in water of the different surfactant segments, which is a function of their composition and (indirectly) of the production process used.

12. This classification of surfactants in four different product segments in accordance with the chemical structure and the electrical charge of the surfactants is largely accepted by the industry, even if it seems that a limited degree of substitutability between different surfactants' types is possible with regard to particular applications.

<u>Anionic surfactants</u>

13. Anionic surfactants have a negative charge. The bulk of anionic surfactants are produced through sulfonation of the relevant raw materials, but specialty anionics are produced using a variety of other methods. The most commonly used anionic surfactant is linear alkybenzene sulphonate, which is used in most laundry detergents powders.

<u>Non-ionic surfactants</u>

14. Non-ionic surfactants have no charge. The bulk of non-ionic surfactants are produced through ethoxylation of the relevant raw materials. Non-ionic surfactants are generally less sensitive to hard water than anionics and generate less foam. In many detergent formulations, they are added to complement the properties of anionics and cationics.

<u>Cationic surfactants</u>

15. Cationic surfactants have a positive charge. Cationics are lower volume, more specialist surfactants, which may be produced through various production processes. Cationics are widely used both in non-aqueous systems and in applications such as

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4 Case No IV/M.1517 - Rhodia / Donau Chemie / Albright & Wilson.

textile softeners, dispersants and emulsifiers. Functional effects of cationic surfactants include softening, lubrication, corrosion inhibition and anticaking.

Amphoteric surfactants

16. Amphoteric surfactants have a charge that is either positive or negative, depending on the pH of the solution. Amphoterics carry both cationic and anionic groupings within the molecule, acting as anionic materials in alkaline pH conditions and cationic materials in acid pH conditions. Amphoteric surfactants are widely used for light-duty washing applications and are also becoming more widely used in heavy-duty laundry detergents, industrial cleaning formulations and as corrosion inhibitors in metal working and oil-field applications.

2. Vertically related markets

17. With regard to upstream markets, surfactants are made from a wide range of input materials. Huntsman produces and/or sells in/into Europe several of these input materials: cumene, dimethylaminopropylamine (DMAPA), ethanolamine, fatty alcohols, maleic anhydride, nonyl phenol, toluene and xylene.

18. Among these raw materials, only DMAPA constitutes a vertically affected market for the purposes of this Decision. DMAPA is a commodity chemical used mainly in the production of particular types of surfactants. DMAPA is generally considered to be a separate product market. However, the precise market definition can be left open, since the operation does not lead to the creation or strengthening of a dominant position in this market or foreclosure in any downstream market.

B. Relevant geographic markets

1. Surfactants

19. The parties have submitted that the relevant geographic market for surfactants is Western-European wide, in line with previous Commission Decisions[5]. Due to the high level of overcapacity that characterises the Western European surfactants industry, European supply can largely meet Western European demand. There are significant intra-European trade flows and intra-European transportation costs are not significant. Imports account for less than 10% of Western European consumption, and therefore play a very modest role. Suppliers are typically active in more than one country and there are no significant price differences. The majority of surfactants are sold directly to major consumer products companies, and suppliers compete to obtain these companies' quarterly orders on an EEA-wide level. The geographic market definition on a Western European level appears to apply equally to all surfactants.

2. DMAPA

20. The parties submit that the relevant geographic market for DMAPA is world-wide. This opinion is generally confirmed by the Commission’s investigation. In any event, all third parties stated that the relevant geographic market for DMAPA is at least Western European wide, if not larger. However, it is not necessary to decide upon the exact geographic market definition as the proposed acquisition will not lead to the creation or the strengthening of a dominant position under any of the envisaged market definitions.

C. Assessment

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5 Case No IV/M.1517 - Rhodia / Donau Chemie / Albright & Wilson.

1. Surfactants

21. The proposed acquisition seems to be complementary from a geographic point of view: the Huntsman group is active in surfactants in North America and Australia while A&WSE is active predominantly in Europe. No entity within the Huntsman group produces any surfactants in Europe, though its US and Australian operations have *de minimis* import sales (<[5]%) into Europe of non-ionic surfactants. Therefore, no significant competitive horizontal overlap will be created between A&WSE and Huntsman in any product market in Western Europe.

22. ICI, on the other hand, produces and sells all four families of surfactants in Europe. Therefore, there will be a horizontal overlap between ICI's and A&WSE's surfactants operations.

23. Neither of the product markets for anionic, cationic and amphoteric surfactants are affected markets, since the parties' combined market shares (including ICI's) are below 15% in each of these product markets.

<u>Non-ionic surfactants</u>

24. The parties' combined market share will amount to [10-20]% with regards to non-ionic surfactants (Huntsman: [<5]%, A&WSE: [0-10]%; ICI: [0-10]%) and therefore this market constitutes an affected market for the purposes of this Decision. However, even during the transitional period prior to ICI's divestiture of its shareholding in Huntsman International Holdings (or in the absence of such a divestiture), the total combined market share of the parties is relatively low. Their combined share would be similar or even smaller than the market shares of several of their competitors (Henkel/Cognis, Condea/Sasol, Basf, and Shell). Moreover, other factors seem to guarantee strong competition in the market. These are: (1) an excess of production capacity within the European industry; (2) low barriers to entry; (3) substantial countervailing bargaining power of customers; and (4) some degree of demand-side substitutability at the end formulation level.

25. For the above reasons, the Commission considers that the proposed operation does not lead to the creation or the strengthening of a dominant position in the non-ionic surfactants market.

2. DMAPA

26. Regarding the vertically affected market of DMAPA, Huntsman has a [30-40]% share of the European supply of this commodity chemical used in the production of surfactants. Huntsman's worldwide market share for DMAPA is in the order of [25-35]%. The proposed transaction will not bring about any increment in Huntsman's DMAPA market share, since neither A&WSE nor ICI produce DMAPA. The combined A&WSE and ICI market shares in DMAPA's downstream markets is [15-25]% for any product segment.

27. The proposed transaction will not create any risk of vertical foreclosure in the downstream market, since Huntsman's downstream competitors producing surfactants will not be foreclosed from adequate sources of DMAPA supply. There are other suppliers of DMAPA in Europe, several of which are not vertically integrated into downstream production of surfactants. The main supplier to the European market is Basf and other suppliers include undertakings such as Hoechst Celanese, Alkylamines and Air Products. In addition, customers of DMAPA include large companies that have significant bargaining power.

VI. ANCILLARY RESTRAINTS

28. The parties have notified a number of agreements and obligations which they consider as directly related and necessary to the implementation of the concentration. These obligations and agreements are aimed at ensuring that: (1) the full value of the acquired A&WSE business is transferred to Huntsman; (2) Rhodia is able to operate its retained non-European Albright & Wilson surfactants operations and its retained Rhodia surfactants operations; and (3) the necessary interfaces are put in place between the parties at the shared UK sites.

29. Rhodia S.A. is an international group which is active, *inter alia*, in specialty chemicals. Rhodia was already active in the manufacturing of surfactants prior to its acquisition of Albright & Wilson, and will continue to be so after the selling of A&WSE, since Rhodia will retain its pre-existing surfactants operations.

30. Rhodia and Huntsman have agreed to confidentiality and non-disclosure obligations concerning information obtained during the course of negotiations and due diligence or while the A&WSE business and the retained Rhodia businesses were under common ownership. These agreements can be considered directly related and necessary to the implementation of the concentration.

31. Rhodia and Huntsman have agreed to reciprocal employee non-solicitation obligations for a period of [<3] years post-closing. The non-solicitation clause imposed on Rhodia aims at ensuring that the full value of the acquired A&WSE business is transferred to Huntsman International. The non-solicitation clause imposed on Huntsman is intended to ensure that Rhodia will maintain the full value of its retained business, which will compete with the A&WSE operations that Rhodia is transferring to Huntsman. Considering the limited duration of the employee non-solicitation clauses, and the particular circumstances of the transaction (the vendor will remain in the market and will compete with the buyer and both will share some production facilities) and in line with previous Decisions[6], the Commission considers that the above clauses are necessary to ensure that neither the vendor nor the buyer undermine the agreed value of the transaction by attempting to recapture valuable employees.

32. The parties have agreed to several non-compete obligations. According to the general non-compete clause, for a period of [<3] years after closing the Rhodia group will not produce, supply or sell in Europe any products which compete with the existing A&WSE products. This obligation is completed with a customer-related non-compete clause, by which Rhodia, for the same period of [<3] years, will not knowingly supply or sell in Europe any products which compete with the existing A&WSE operations to any person who in the [<3] years prior to the date of the agreement has been a customer of A&WSE in Europe in relation to the relevant product. Hence, these non-compete obligations are limited in terms of their geographic scope (Europe), their temporal scope (a maximum of [<3] years) and their product scope […]. Moreover, both the general and the customer-related non-compete obligations are subject to a number of exceptions that further reduce their respective scope. Consequently, to the extent that these obligations constitute a restriction on competition, the Commission considers them as directly related and necessary to the implementation of the concentration.

33. Huntsman International and Rhodia will provide certain services and utilities to each other at the facilities located in the UK, in which Rhodia will retain activities. These

[6] (1) Employee non-solicitation obligations imposed on the seller: Case No COMP/M.2136 - Schroder Ventures/Memec; Case No COMP/M.2161 - Ahold/Superdiplo; (2) Employee non-solicitation obligations imposed on the buyer: Case No IV/M.1831 - Deutsche Bank/CIBA; Case No COMP IV/M.319 - BHF/CCF/Charterhouse.

services and utilities are, *inter alia*, the following: provision of a medical department, IT network and system support and maintenance, maintenance and operation of a steam generating plant, telecom services, site infrastructure services, human resources, catering, engineering purchasing, quality assurance, steam, electricity, natural gas, water, nitrogen, compressed air, diesel fuel and cooling water. These services agreements are intended to guarantee the continuity of services necessary to the operation of the acquired and retained businesses in the same manner as these services had been previously assured within a single economic entity. The parties submit that the services in question cannot efficiently and cost-effectively be provided in any other way. Therefore, to the extent that these services agreements constitute a restriction on competition, the Commission considers them as an integral part of the transaction for a period of up to three years. A period of maximum three years would in view of the Commission be reasonable to ensure the continuity of the necessary operations.

34. This three year limit does not apply however to the Tank Clean Agreement, which is an existing agreement with a third party supplier for the provision of tanker washing services. This agreement can be terminated by either party at [short] notice, such notice not to be given before […]. Because of the long term of this agreement and the existence of early termination penalties, the parties reached a commercial agreement whereby Rhodia would remain a party to the original contract and A&WSE guarantees that the surfactants business will pay for […]. In so far as this agreement should amount to a restriction of competition, it can be considered directly related and necessary to the implementation of the concentration.

35. For a period of [< one] year after closing, Rhodia and Huntsman will supply to each other several products and services at the Whitehaven (UK) site. These limited supply obligations are necessary to ensure a smooth transfer of the A&WSE business from Rhodia to Huntsman International and a smooth division of the businesses operating at the Whitehaven site. These agreements can be considered directly related and necessary to the implementation of the concentration.

36. The parties have entered into a toll manufacturing agreement relating to the production by A&WSE of […] products for Rhodia's retained […] business, which is not being divested to Huntsman International. A&WSE will produce these manufactured [...] products and sell them […] to Rhodia, for its internal use and resale. Rhodia will provide certain of the necessary raw materials and will license to A&WSE the necessary trademarks and process intellectual property rights. The agreement provides that Rhodia will purchase […] and A&WSE must set aside […] capacity for Rhodia. Rhodia is obliged to source […] products from A&WSE, unless A&WSE is unable to supply them. The agreement is for an initial period of [≤ three] years, renewed thereafter on an annual basis, subject to a [short] termination notice by either party. The parties submit that the agreement aims at guaranteeing continuity of supply of products necessary to Rhodia in the same manner as these products had previously been supplied within the single economic entity. In particular, these arrangements result from the physical integration of the assets to be used for Rhodia's business in the centre of several A&WSE surfactants sites. The […] obligation imposed on A&WSE reflects the fact that Rhodia is retaining ownership of the entire […] business and that Rhodia is merely subcontracting production to A&WSE. The […] obligation imposed on Rhodia it is said to be justified in view of […], A&WSE being contractually restricted from using the production equipment and the know how and process technology to manufacture competing products. The Commission considers however that the […] purchasing and selling obligations provided for in the tolling agreement are not to be considered as directly related and necessary to the implementation of the concentration.

First, Rhodia's intellectual property rights regarding the use by A&WSE of Rhodia's process technology and know how will be effectively protected through their respective licenses. Second, A&WSE's guarantee of […] quantity, which should be calculated and negotiated in a way as to make it commercially viable for A&WSE to maintain the equipment and capacity required, and there is no need to impose on Rhodia […] purchasing obligation regarding […].

37. The parties have entered into a number of intellectual property licenses, in particular the following: […]. These intellectual property licenses are necessary to enable Rhodia to continue operating its retained non-European Albright & Wilson business while ensuring the transfer of the full value to Huntsman International of the transferred A&WSE, which owns the worldwide technology and know how. The patent and know how license and trademark license in favour of Rhodia are intended mainly to respect several pre-existing agreements between Rhodia and certain third companies, which are not being transferred to Huntsman. The Trade Mark Use Agreements regulate the use of Rhodia's and A&WSE/Huntsman marks and prevent instances of confusion regarding the use of marks which have the same prefix, while restricting their use to specific spheres of business. The interim trade mark licenses are intended to ensure that each party is able to operate its acquired and retained businesses respectively because trademarks are shared. The various intellectual property rights' agreements described above can in view of the Commission be considered directly related to and necessary for the implementation of the concentration.

VII. CONCLUSION

38. 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,
Franz FISCHLER
Member of the Commission