EN

Case No COMP/M.2277 - DEGUSSA / LAPORTE

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REGULATION (EEC) No 4064/89
MERGER PROCEDURE

Article 6(2) NON-OPPOSITION
Date: 12/03/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, **12.03.2001**
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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 Where possible the information omitted has been replaced by ranges of figures or a general description.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(2) DECISION

To the notifying party

Dear Sir/Madam,

Subject: Case No COMP/M.2277 – Degussa / Laporte
Notification of 26 January 2001 pursuant to Article 4 of Council Regulation No 4064/89

1. On 26 January 2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No. 4064/89[1] as last amended by Regulation (EC) No. 1310/97[2] ("the Merger Regulation") by which the German undertakings Degussa-Hüls AG and SKW Trostberg AG, [now Degussa AG ("Degussa")], acquire within the meaning of Article 3(1)(b) of the Merger Regulation control of the whole of the British undertaking Laporte plc ("Laporte") by way of a public bid announced on 15 December 2000.

2. During the investigation, Degussa submitted undertakings in order to eliminate the competition concerns identified by the Commission, in accordance with Article 6(2) of the Merger Regulation. In the light of these modifications, the Commission has concluded that the notified operation falls within the scope of the Merger Regulation and does not raise serious doubts as to its compatibility with the common market and with the functioning of the EEA Agreement.

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1 OJ L 395, 30 December 1989, p. 1, corrigendum: OJ L 257, 21 September 1990, p. 13.

2 OJ L 189, 9 July 1990, p. 1, corrigendum: OJ L 40, 13 February 1998, p. 17.

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I. THE PARTIES

3. Degussa was formed by the merger of Degussa-Hüls AG and SKW Trostberg AG, which was finalised on 9 February 2001, and is active in the production and distribution of speciality chemicals and other chemical products and procedures. The company is a majority-held subsidiary of E.ON AG (“E.ON”), a German conglomerate group with activities in the supply of electricity and gas, chemicals, telecommunication, oil, packaging, aluminium and trading. E.ON itself was formed in 2000 by the merger of VEBA AG (former parent company of Degussa-Hüls AG) and VIAG AG (former parent company of SKW Trostberg AG)[3].

4. Laporte is a UK based company listed on the London Stock Exchange. It is active in the production and distribution of fine chemicals, performance chemicals, and catalysts and initiators.

II. THE OPERATION

5. The operation consists in a public offer for all of Laporte’s issued and to be issued share capital by Degussa through a wholly owned subsidiary, Degussa SKW Co. The offer was announced on 15 December 2000, and the offer document was posted to shareholders on 12 January 2001.

III. CONCENTRATION

6. The notified operation constitutes an acquisition of sole control by Degussa over Laporte and, therefore, a concentration within the meaning of Article 3(1)b of the Merger Regulation.

IV. COMMUNITY DIMENSION

7. The undertakings concerned have a combined aggregate world-wide turnover of more than € 5 billion[4]. In 1999, E.ON’s predecessor companies VEBA AG and VIAG AG achieved a combined world-wide turnover of € 72,392 million, whereas Laporte’s turnover was € 604 million. Each of E.ON and Laporte have a Community-wide turnover in excess of EUR 250 million (VEBA AG and VIAG AG together € 50,247 million, Laporte € 368 million in 1999), 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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3 See case COMP/M.1673 – VEBA/VIAG, decision of 13 June 2000.

4 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.

V. COMPATIBILITY WITH THE COMMON MARKET

(1) Relevant product markets

8. Although the parties produce a wide range of chemicals and there are a number of mostly vertical relations between these products, the only concerns identified by the Commission are in the markets for persulfates, cationic reagents and hydroxy monomers.

1. Persulfates

9. The activities of the parties overlap in the production of several persulfates. Degussa produces ammonium and sodium persulfate, while Laporte produces ammonium, sodium and potassium persulfate.

10. Persulfates are white, crystalline powders, which are used primarily as polymerisation initiators in the plastics industry. There are several persulfates commercially used, namely potassium peroxomonosulfate, ammonium peroxodisulfate, sodium peroxodisulfate and potassium peroxodisulfate.

11. Since all these substances have some common characteristics, the parties believe that there is an overall market of all persulfates. This has been confirmed by the investigation of the Commission.

12. The Commission therefore concludes that the market for persulfates is the relevant product market.

2. Cationic reagents

13. Cationic reagents (or QUABs) are mainly (95 %) used for the production of cationic starches, modifying starches gained from potatoes, corn or wheat to cationic starch ethers using cationic reagents. The main customers are starch mills, which manufacture and supply the cationic starches to the paper industry.

14. There are two main types of cationic reagents: cationic reagent (QUAB) 188 and cationic reagent (QUAB) 151. Cationic reagent 151 is produced from cationic reagent 188 by means of a reaction with sodium hydroxide. Both cationic reagents are used in different technical processes. Furthermore, there is a significant price difference of around 50 % per kg. Moreover, cationic reagent 151 is a highly unstable substance that has to be stored and transported under strict physical conditions, while cationic reagent 188 is a stable and insensitive substance that can be stored and transported without incurring heavy cost. The parties consider cationic reagents 188 and 151 to be each a separate relevant product market, in line with a previous Commission decision.[5] The Commission's investigation has confirmed this view.

[5] Case IV/M.942 – VEBA/Degussa, decision of 3 December 1997 (OJ L 201, 17.07.1998, p. 102), para. 35.

3. Hydroxy Monomers

15. The parties consider the relevant product market to be "monomers for the coating industry" owing to the fact that […] of Laporte monomers sales in the EEA arise in that sector whilst Degussa produces monomers for various applications. The market investigation carried out by the Commission, however, suggested that a more narrowly defined market for hydroxy monomers existed. The term hydroxy monomers covers the following four products:

- hydroxy ethyl acrylate (HEA)
- hydroxy propyl acrylate (HPA)
- hydroxy ethyl methacrylate (HEMA)
- hydroxy propyl methacrylate (HPMA).

16. Laporte activities are limited to these four products whilst Degussa producers a wider range of monomers. Hydroxy monomers are mainly used to achieve properties like hardness, flexibility and durability for automotive paintings and refinishing, industrial coating, adhesives and UV curing. Hydroxy monomers are said to be different from other monomers used in the coating industry in their chemical characteristics, chemical composition and application. Furthermore, the number of suppliers, prices and quantity used also distinguishes this group of monomers from the others.

17. The parties argue that hydroxy monomers do not constitute a separate relevant product market. In particular, they argue that hydroxy monomers are only one way to achieve the desired result in the coating industry. Similar results can be achieved by using other acrylic monomers or by using other different chemistries. Furthermore, as customers achieve coating properties by means of various blends of monomers they tend to purchase bundles of different monomers. Finally, it is argued that the coating industry is characterised by continuous product development and hydroxy monomers are currently losing ground to other developments and this trend is likely to persist.

18. With a respect to substitutability the parties argue that the functions carried out by hydroxy monomers can be achieved by using different coating systems based on different chemistries. The Commission's market test did not rule out the technical possibility of substitution but raised concerns over the practicability of doing so. Indeed a switch of monomers could mean the introduction of a completely new and different chemistry which would take a number of years and involve extensive testing work. The majority of respondents said they could not substitute their present demand for hydroxy monomers easily or in some cases at all.

19. The Commission's market investigation did not support the claim that monomer purchasers were bundled. Indeed most respondents said they purchased hydroxy monomers independently.

20. The parties have also argued that Glycidyl methacrylate (GMA) is a product that can be used instead of hydroxy monomers and actually improves the end product in terms of water proofing aspects, for example. They argue that its use is now growing rapidly and that the Commission should consider this development in the

market rather than to look at hydroxy monomers in isolation. The Commission's market test confirmed that GMA could be a competitive alternative to hydroxy monomers in certain applications but that there were large barriers to formulation change and getting a coating systems specified with any alternative formulation which may take several years. Furthermore, the cost of GMA was highlighted as a barrier to switching, in particular, it was felt that the technology using GMA was not yet fully developed and economical for mass production. The parties have confirmed that GMA is more expensive and does not process all the qualities of hydroxy monomers. Given this the Commission can not at present consider the influence of GMA as the constraining factor on the price of hydroxy monomers.

21. The Commission therefore concludes that there is a separate relevant market for hydroxy monomers.

(2) Relevant geographic markets

1. *Persulfates*

22. The notifying parties submit that the relevant geographic market for persulfates is world-wide or at least EEA-wide. The parties claim that there are several reasons why the market should be considered global.

23. The parties argue that most major players sell persulfates in several regions around the world, and there are only a limited number of production sites which supply the customers world-wide.

24. Whilst producers may operate on a world-wide basis, there is a significant difference between European and world-wide market shares. The parties, who are the only European producers, have market shares of [between 15 -25%] for Degussa and [between 45-55%] for Laporte in Europe, while the world-wide market shares are [between 0-10%] and [between 15-25%] respectively. This is due to the fact that the vast majority of the production of Degussa […] and Laporte […] is sold in Europe, although the European market accounts for only [between 30-40%] of the world market.

25. Furthermore, the strongest global competitors, the US-American company FMC (USA), the Japanese companies MGC and Asahi Denka as well as the producers from the People's Republic of China (PRC) are all hardly active on the European market, and they all have market shares below 1 % in Europe.

26. Imports from the PRC are currently subject to an 83.3 % anti-dumping tariff, which is currently being reviewed. Since the PRC is the fastest growing producer of persulfates with a 25 % share in global capacity in 1999 this is a significant barrier to entry to the European market.

27. These factors suggest that the market conditions in the EEA differ significantly from market conditions in the rest of the world. On the other hand, there is no indications that the market might be narrower than EEA-wide.

28. The Commission therefore concludes that the geographic dimension of the market is EEA-wide.

2. Cationic Reagents

29. The parties consider the geographic for cationic reagents 188 and 151 to be world-wide or at least EEA-wide.

30. The Commission's investigation has indicated that the geographic market for cationic reagent 151 is not larger than EEA-wide, given the difficulties and costs of transportation arising due to the product's properties. Although Degussa, the leading supplier of cationic reagent 151 both within the EEA and world-wide, has closed its production of cationic reagents in Knapsack (Germany) in 1998 and produces them only in the USA and Brazil, it has considerably lost market share to Laporte after the closure of its European production site. However, the exact geographic market definition for cationic reagent 151 can be left open, since on both an EEA-wide or world-wide market the operation would lead to the creation of a dominant position.

31. With regard to cationic reagent 188, transport costs do not play the same role as concerning cationic reagent 151. However, market shares within the EEA and world-wide differ considerably. Dow, the biggest producer of cationic reagent 188 world-wide ([between 30-40%] market share), has gained only a limited market share in Europe ([between 0-10%]). On the other hand, Laporte's EEA market share ([between 40-50%]) is more than twice its world-wide share ([between 15-25%]), and its world-wide market share is mainly achieved with sales in Europe. Degussa is the only true global player in this market; it has production facilities in the USA and Brazil and, having been a European producer until very recently, retains strong customer relations in the EEA. Under these circumstances, the Commission concludes that the geographic market for cationic reagent 188 is no larger than EEA-wide.

3. Hydroxy Monomers

32. The parties states that the geographical market for monomers for the coating industry and that for hydroxy monomers are world-wide. This, they claim, is demonstrated by similar world-wide prices, similar competitors, similar customers, similar product qualities and the absence of various trade barriers including transport costs.

33. Suppliers of hydroxy monomers are mainly located in Europe, US or in Japan. According to the parties the US companies presents on the European market accounted for less than 10% in 1999 of the European hydroxy monomers market whilst the Japanese companies accounted for just under 20%.

34. The Commission's market investigation has indicated that the market for hydroxy monomers is European. Customers often require just-in-time delivery, and would find it difficult therefore to rely to any significant extent on suppliers outside Europe. Furthermore concerns were raised in relating to capacity constraints elsewhere, the ability of non-European manufacturers to meet European quality

requirements and finding sources which were reliable, consistent and able to provide long-term supply.

35. The Commission, therefore, considers that the relevant geographical market for hydroxy monomers is EEA-wide.

(3) Competitive Assessment

1. Persulfates

36. The parties are the only European manufacturers of persulfates, and have a combined EEA-wide market share of [between 65-75%] (Degussa [between 15-25%], Laporte [between 45-55%]). The strongest competitors are the Taiwanese company San Yuan (13 %) and DuPont (12 %).

37. The concentration will lead to a very high combined market share of the parties and widen the already significant distance to their closest competitors.

38. The concentration will therefore lead to a creation or strengthening of a dominant position on the EEA-wide market for persulfates.

2. Cationic Reagents

39. On the market for cationic reagent 151, the number of producers world-wide would be reduced from 3 to 2. According to the parties, they would have a combined market share of [between 15-25%] (Degussa [between 10-20%], Laporte [between0-10%] in the EEA and [between 25-35%] (Degussa [between 20-30%], Laporte [between 0-10%]) world-wide, while the Finnish producer Raisio would be by far the largest producer with a market share of [between 75-85%] in the EEA and [between 65-75%] world-wide. However, the Commission can not base its assessment of the market on the parties' estimation of market shares, since its investigation has indicated that the overall volume of the market is considerably smaller than estimated by the parties. According to the information obtained during the investigation, Raisio's production is mainly for captive use, whereas the combined market share of the parties both in the EEA and world-wide would be [around 80-90%]. Also taken into account Raisio's overall production capacity, its market position would not be a competitive constraint to the combined operation of the parties. The operation would therefore lead to the creation of a dominant position on the world-wide or EEA market for cationic reagent 151.

40. On an EEA-wide market for cationic reagent 188, according to the parties the market structure would be the following:

Company	Country	Market share based on volume [%]
Degussa	Germany	[between 10-20%]
Laporte	UK	[between 40-

		50%]
Combined		**[between 55-65]**
Condea Servo	Netherlands	[between 10-20%]
Raisio	Finland	[between 5-15%]
Hebron	Spain	[between 10-20%]
Dow	USA	[between 0-10%]

41. This market structure has been broadly confirmed by the Commission's market investigation.

42. Following the operation, the number of local producers would be reduced from 5 to 4, since Dow is only present with imports from the USA. The merged entity would be by far the largest competitor in the EEA with a combined market share of [between 55-65%], and the distance to the second largest competitor would widen considerably. It would also take over Dow's position as world market leader, since the parties have a combined world-wide market share of [between 45-55%], compared to 34 % for Dow. The merged entity would be able to rely on Degussa's strong customer base in Europe, while offering those customers supply from Laporte's European production.

43. The Commission's investigation has furthermore shown that potential competition from captive use producers, including Raisio and the French company Roquette, would not significantly constrain the merged entity's market position. Captive producers have limited capacity available to supply the market, and they may not always meet customers' quality requirements. In addition, some customers expressed concerns to rely on a supplier that in the same time competes with them on the downstream market for cationic starches.

44. The parties' combined market power would also not be balanced by countervailing buying power, since most customers of cationic reagents are medium-sized starch producers. There are therefore serious doubts that the operation would lead to the creation of a dominant position on the EEA market for cationic reagent 181 as well.

3. Hydroxy Monomers

45. The parties estimate the size of the hydroxy monomers market in 1999 in Europe to be [around 20 kt] and estimate the market shares to be [40-50%] for Laporte and [15-25%] for Degussa. The parties have identified three European suppliers, three Japanese companies and two US companies as active on the European market.

Company	Country	Volume [kt]	Share [%]
Laporte	UK	[…]	[between 40-50%]

Degussa	Germany	[…]	[between 15-25%]
Combined		**[…]**	**[between 60-70%]**
Mitsubishi rayon	Japan	[…]	[between 5-15%]
BASF	Germany	[…]	[between 5-15%]
Dow	USA	[…]	[between 0-10%]
Mitsubishi gas	Japan	[…]	[between 0-10%]
Nippon Shokubai	Japan	[…]	[between 0-10%]
Rohm & Haas	USA	[…]	[between 0-10%]
Total		**[…]**	**100**

46. The Commission's market investigation has broadly confirmed the market structure although many consider the parties to be the only two European suppliers and award these higher market shares. The US companies were regarded as barely present and the market participants had serious concerns with respect to the Japanese suppliers ability to deliver in a reliable and consistent manner. Other concerns raised about the proposed merger related to higher prices, security of supply and the inability to find other suppliers.

47. Barriers to entry into the production of hydroxy monomers were considered high and it was unlikely that a new producer would emerge.

48. The Commission therefore, finds that the proposed merger raises serious doubts as to its compatibility with the common market in the market for hydroxy monomers.

D. Commitment package submitted by Degussa

49. With a view to rendering the concentration compatible with the common market, Degussa has proposed commitments regarding the divestiture of certain businesses, as set out in detail in the annex to this decision, which forms an integral part of this decision. The commitment package was first submitted on 16 February 2001. It included divestiture commitments with regard to persulfates and cationic reagents, as well as the proposal to enter into a toll manufacturing agreement with a third party for hydroxy monomers. Following the result of the Commission’s market test, on 6 March 2001 Degussa submitted a modification to the commitment package with a view to improving the part of the commitments relating to hydroxy monomers by proposing a full divestiture of assets instead of the originally proposed toll manufacturing arrangement also with regard to this market. This limited modification of the original commitment package, presented as an immediate response to the result of the market test, includes an improvement

which ensures that the commitments as a whole are workable and effective.[6] The commitment package now includes the undertakings discussed below.

1. Persulfates

50. Degussa offered to divest the persulfates Business of Degussa at the plant in Rheinfelden/Germany together with all related human resources tangible and intangible assets of that company's plant in, including customer base and good-will, to an independent third party. This business consists of the production plant, the storage depot for products as well as the railcar unloading areas for sulphuric acid and ammonia, as well as the related human resources and tangible and intangible assets, including customer base and good-will. The plant would operate on the principle of an industrial park.

51. Sodium hydroxide is currently supplied by a central supply network of pipelines for the whole plant and would therefore have to be bought from the site. However, there is an old railcar unloading station (which does not meet latest German standards) and a small tank close to the production plant which could be upgraded to guarantee an independent supply of sodium hydroxide. The plant will therefore be able to operate on a stand alone basis.

52. Since the divested business comprises the whole of Degussa's persulfates production, the proposed divestment completely removes competition concerns in the persulfates market.

2. Cationic Reagents

53. Degussa offered to divest the share capital of Laporte Performance Chemicals B.V., together with all related human resources tangible and intangible assets of that company's plant in Zaltbommel, including customer base and good-will, to an independent third party. This divestment ensures that competition on the markets for cationic reagents 188 and 151 will not be affected by the operation, since it covers Laporte's whole production of cationic reagents, thus removing the competition concerns in these markets.

3. Hydroxy Monomers

54. Degussa offered to divest the Hythe plant and business currently operated by Laporte Performance Chemicals UK Ltd which includes Laporte's hydroxy monomers business and all related human resources and tangible and intangible assets, including customer base and good-will. This plant covers all of Laporte monomers production. This divestment completely removes competition concerns in the hydroxy monomer market.

4. Conclusion

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6 Commission Notice on remedies acceptable under Council Regulation (EEC) No 4064/89 and under Commission Regulation (EC) No 447/98, paragraph 37 (OJ C 68, 02.03.2001, p. 3).

55. In the light of the above, the Commission concludes that the commitments given by Degussa are sufficient to remove the competition concerns identified by the Commission during its investigation.

56. The divested businesses will only be sold to a purchaser who is a viable existing or prospective competitor, independent of the merging parties and possessing the financial resources and proven expertise enabling them to operate the business as an active competitive force in competition with the merged entity and other competitors.

57. If a purchaser has a significant captive use the Commission may not be able to consider the purchaser a viable competitor, because this limits the quantities available for the free market and therefore the competitive force of the purchaser.

58. In order to ensure that Degussa complies with these commitments, the Commission attaches conditions and obligations to this decision in accordance with Article 6(2) of the Merger Regulation:

59. The commitments

- to divest the businesses referred to in paragraphs 49 to 54 above (paragraph 1 of the annex to this decision);

- to assign to the purchaser the tangible and intangible assets needed to render the divested businesses commercially viable (paragraph 3 of the annex to this decision);

- to effect the above mentioned divestitures within a certain time limit or have them effected by an independent trustee within a certain time limit (paragraph 4(a), (c) to (e) and 5 of the annex to this decision), subject to potential modification of these time limits by the Commission in accordance with paragraphs 4(b) and 6 of the annex to this decision; and

- to comply with any measure the trustee appointed in accordance with paragraph 8 of the annex to this decision may impose on Degussa in accordance with paragraph 9(e) of the annex to this decision to ensure compliance with any other commitment that constitutes a condition;

- constitute conditions attached to this decision, since only by fulfilling them the structural change on the relevant markets may be achieved.

60. All the other commitments by Degussa as laid out in the annex to this decision constitute obligations attached to this decision, since they concern the implementing steps necessary to achieve the structural change intended.

VI. CONCLUSION

61. For the above reasons, the Commission has decided not to oppose the notified operation as modified by the commitments submitted by Degussa and to declare it

compatible with the common market and with the functioning of the EEA Agreement. The Commission attaches to this decision

- the conditions that Degussa fully complies with those commitments laid down in the annex to this decision as identified in paragraph 56 above;

- the obligations that Degussa fully complies with all the other commitments laid down in the annex to this decision.

62. This decision is adopted in application of Article 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission

(Signed)
Mario MONTI
Member of the Commission

CASE NO. COMP/M.2277 – DEGUSSA/LAPORTE:

PROPOSED COMMITMENTS TO THE EUROPEAN COMMISSION

Pursuant to Article 6(2) of Council Regulation (EEC) NO. 4064/89 as amended (the "Merger Regulation"), Degussa AG ("Degussa") hereby gives the commitments set out below to the European Commission (the "Commission") with respect to the proposed takeover by Degussa of Laporte PLC ("Laporte"). This takeover will take place in consequence of the public offer (the "Offer") for the entire issued share capital of Laporte made by the newly formed special purpose company owned by Degussa. These commitments shall take effect upon approval by the Board of Degussa (and consultation of the relevant works councils), following receipt of the Commission's decision declaring the concentration compatible with the common market pursuant to Article 6(1)(b) of the Merger Regulation and shall be subject to Degussa acquiring at least 90% in nominal value of the Laporte shares to which the Offer relates (the "Commitment Date"). Degussa shall not be bound by these commitments if the transaction in its entirety is abandoned after receipt of the Commission's decision.

DEFINITIONS

The Rheinfelden Persulfates Business means those parts of a chemical plant operated currently by Degussa at Rheinfelden, and all related human resources and tangible and intangible assets as set out in more detail in the divestiture package in Schedule 1.

The Zaltbommel Plant means a chemical plant operated currently by Laporte Performance Chemicals B.V. at Zaltbommel, and all related human resources and tangible and intangible assets as set out in more detail in the divestiture package in Schedule 2.

The Hythe Plant means the chemical plant currently operated by Laporte Performance Chemicals UK Limited which includes Laporte's Hydroxy Monomers Business and all related human resources and tangible and intangible assets as set out in more detail in the divestiture package in Schedule 3.

The Divestment Businesses mean the Rheinfelden Persulfates Business, the Zaltbommel Plant and the Hythe Plant.

The Trustee means an independent trustee, such as an investment bank, appointed by Degussa for the purpose of the present commitments, such appointment being subject to the Commission's prior approval.

Permitted Purchaser means one or more persons identified to and approved by the Commission as a viable entity the transfer to which of any of the Divestment Businesses (or parts thereof) would fulfil the respective commitment. It is agreed that, for a proposed purchaser (or purchasers) of any of the Divestment Businesses (or parts thereof) to meet with the Commission's approval pursuant to paragraph 7(a) of this document, such purchaser shall be a viable existing or prospective competitor independent of the merging parties and possessing the financial resources and proven expertise enabling it to operate the relevant Divestment Business (or parts thereof) as an active competitive force in competition with the merging parties and other competitors. This shall include the possibility of a leveraged / management buy-out.

COMMITMENTS

Degussa makes the following commitments:

1. Degussa undertakes in accordance with the provisions set out below:

(a) to divest or procure the divestiture of the Persulfates Business in Rheinfelden described in Schedule 1 to a Permitted Purchaser.

(b) to divest or procure the divestiture of the Zaltbommel Plant described in Schedule 2 to a Permitted Purchaser.

(c) to divest or procure the divestiture of the Hythe Plant as described in Schedule 3 to a Permitted Purchaser.

2. Following the adoption of the Commission decision declaring the concentration compatible with the Common Market under Article 6(1)(b) of Council Regulation No. 4064/89 as amended from the Commitment Date and pending the divestments envisaged in 1. above, Degussa commits:

(a) to ensure that the Divestment Businesses are held separate and isolated administratively from the remaining chemical business of the merging parties as independent and distinct, economically viable, competitive and marketable businesses; and

(b) to ensure that all relevant assets, tangible and intangible are maintained, pursuant to good business practice and in the ordinary course of business; and in particular:

(i) to use all reasonable efforts to ensure that the Divestment Businesses' production capacities and sales activities are conducted pursuant to good business practices and that all contracts necessary to preserve the Divestment Businesses are entered into or continued in accordance with their terms, consistent with good business practice and the ordinary course of business;

(ii) to use all reasonable efforts to ensure that the know-how and commercial information of a confidential or proprietary nature of the Divestment Businesses are maintained pursuant to good business practice and in the ordinary course of business;

(iii) in the light of Sec. 613 a German Civil Code to use all reasonable efforts to effect that the necessary sales staff and research, production and management and the administrative personnel who are sufficiently commercially and technically competent to operate the Divestment Business as a going concern are maintained. Degussa further undertakes not to offer these persons contracts of employment in the merged entity. Degussa shall take reasonable steps, including incentive schemes (such as payment of all current and accrued benefits, e.g., bonuses and pensions, etc., to which the staff and personnel are entitled), to cause the said staff and personnel to accept offers of employment from the purchaser. For a period of […] following the effective transfer of the Divestment Businesses, the merged entity shall not hire or solicit staff or personnel of the Divestment Businesses who accept such offers unless their contracts of employment have been terminated by the purchaser; special exemptions with respect to the Rheinfelden Persulfates Business are dealt with in Schedule 1.

3. In order to enhance the commercial viability of the Divestment Businesses to prospective purchasers, the Divestment Businesses will include, to the extent permitted by law or contract, unless not required by, and agreed to with the purchaser(s):

(a) the assignment to the purchaser(s), to the extent permitted by law or contract, of all existing contracts, and all contracts entered into between the date of these commitments and the closing of the sale of the Divestment Businesses, which are related to, or associated with, the Divestment Businesses. With respect to existing non-assignable contracts, Degussa shall use its best efforts to assist in the transfer to the purchaser(s) of such contracts; and

(b) a licence of intellectual property rights (i.e. patents, patent applications, technology, know how, (including operational know-how), trade secrets, copyrights, software, but not trademarks) which are currently used by the Divestment Businesses.

4. Degussa undertakes, subject to the provisions set out below:

(a) to effect or procure the divestment of the Divestment Businesses […] of the Commitment Date to Permitted Purchasers approved by the Commission;

(b) in case Degussa is not able to effect the divestment by the end of the […] from the Commitment Date, Degussa may request the Commission to extend the […] period by another […], such request to be submitted to the Commission […] to the expiry of the […] period;

(c) in case Degussa is not able to effect the divestment by the end of the […] or […] from the Commitment Date, as the case may be, Degussa will give an irrevocable mandate to a Trustee to effect the sale of the Divestment Businesses within a period of […], at […]**.** Degussa undertakes to provide the Trustee with all reasonable assistance and information necessary for the execution of such divestment, and shall be kept informed by the Trustee of all negotiations regarding finding a purchaser/purchasers;

(d) Degussa will sign binding sale and purchase agreements with a purchaser/purchasers found by the Trustee pursuant to paragraph 4 (c), and to whom the Commission does not object;

(e) the terms of appointment of the Trustee will be subject to the review and approval of the Commission.

5. Degussa shall be deemed to have complied with the time limits set out in paragraph 4 if, within the […] period or the […] extension thereof granted pursuant to paragraph 4 (b), or the […] extension thereof granted pursuant to paragraph 4 (c), it has entered into a binding contract/binding contracts for the sale of the Divestment Businesses (subject to due diligence and any other conditions not within the control of Degussa or the purchaser) to a Permitted Purchaser, provided that such sale is completed within […] of the date of the contract or such other time limit as may then be agreed by the Commission.

6. The Commission may, upon Degussa's request showing good cause, extend the relevant periods referred to in the paragraphs 4 and 5 above by a period agreed between Degussa and the Commission.

7. Degussa shall:

(a) promptly inform the Commission in writing of any prospective purchaser(s) who indicates a serious desire to purchase the Divestment Businesses and to whom Degussa is seriously considering the sale of the Divestment Businesses and the Commission shall indicate if it considers any such purchaser(s) to be unsuitable pursuant to paragraph 5 above; and

(b) in any event, every […] (or otherwise at the Commission's request) Degussa shall report in writing to the Commission on developments in its negotiations with potential purchasers of the Divestment Businesses subject to the Commission agreeing to keep confidential all such information received.

8. Degussa will, as soon as practicable and in any event no later than […] after the Commission has notified to Degussa its decision under Article 6(1)(b) of Council Regulation No. 4064/89 as amended, appoint an independent trustee, such as an investment bank, subject to approval by the Commission.

9. The Trustee shall,

(a) in consultation with Degussa, determine appropriate measures to ensure the viability, marketability and competitiveness of the Divestment Businesses and monitor the fulfilment by Degussa of its obligations under paragraph 2;

(b) monitor the management and operation of the Divestment Businesses in order to report on their continued viability, marketability and competitiveness. For the purpose of, and to the extent necessary for such monitoring, the Trustee will have access to the personnel and facilities as well as documents, books and records of the Divestment Businesses;

(c) assist Degussa in conducting good faith negotiations with interested third parties with a view to selling the Divestment Businesses by the end of the relevant period mentioned in paragraph 4 (a) and 4 (b) or any extension thereof, or to selling the Divestment Businesses at the best possible price and terms during the […] extension thereof granted pursuant to paragraph 4 (c);

(d) provide to the Commission a written report every […] concerning the monitoring of the operation and management of the Divestment Businesses. In addition to these reports, the Trustee shall promptly report in writing to the Commission if the Trustee concludes on reasonable grounds that Degussa is failing to fulfil its obligations under paragraph 2.

(e) shall have the responsibility for supervision, which includes the right to propose, and, if deemed necessary, impose, all measures which the trustee considers necessary to ensure compliance with any of the commitments, and periodic compliance reports;

(f) cease to perform its duties as trustee with regard to the Divestment Businesses after the closing of the sale of the Divestment Businesses after having requested the Commission for and after having received from the Commission a discharge from further responsibilities. Even after the discharge has been given, the Commission has the discretion to require the reappointment of the trustee, if subsequently it appears to the Commission that the relevant commitments might not have been fully and properly implemented.

Düsseldorf, 6 March 2001

Degussa AG

Schedule 1

Persulfates: The Divestment Package

The Rheinfelden Persulfates Business is a chemical works within a large chemical site at Rheinfelden, Germany. The Rheinfelden Persulfates Business is a stand alone business which can be pursued viably and independently from the other businesses conducted at Rheinfelden. It comprises the following:

Assets

Production plant	Building 279 (see **Annex 1** hereto comprising a site map and photographs of the relevant assets)
Storage depot for products	Building 269
Ammonia tank area and railcar unloading area	Building 618
Sulfuric acid tank area and railcar unloading area	Building 448 (part of - chemicals of other businesses are also stored in building 448)

The production plant itself, and the raw materials tanks and the pipelines from the tanks to the production plant can be clearly assigned to a purchaser of the Rheinfelden Persulfates Business. One building in which two tanks for sodium hydroxide are housed (see below) and which are also used by other businesses could not be transferred but this would not affect the ability of the purchaser of the Rheinfelden Persulfates Business to operate this business independently. Electricity cables would be jointly used but electricity costs could be billed to the purchaser of the business.

The property on which the fixed assets are located can be leased to a purchaser of the business. A charge would be made for the use of works roads and other means of access/property.

Personnel

This business comprises[…] staff, including the manager. The obligation under para. 2 (b) (iii) of the Commitment Letter to use all reasonable efforts that said personnel accept offers of employment from the Permitted Purchaser does not comprise efforts with respect to:

- […]

Intellectual Property

The intellectual property rights necessary to operate the business would be part of the sale of this business. Information on the intellectual property concerned is set out in **Annex 2** hereto. […].

Access to Raw Materials

The Rheinfelden Persulfates Business has access to all necessary raw materials as follows:

- Sulfuric acid
  - stored in building 448 in two tanks;
  - tanks and equipment can be clearly assigned, the tank basins are also used by other businesses;
  - sulfuric acid is bought from third party suppliers.
- Ammonia
  - clearly assigned tanks;
  - several small customers for ammonia exist within the Rheinfelden works. Whilst the purchaser of the Rheinfelden Persulfates Business would acquire these tanks, he would then supply these small customers;
  - ammonia is bought from third party suppliers.
- Sodium hydroxide
  - own small tank, but there is no unloading station;
  - solution arrives from a pipeline from the southern part of the works where it is stored having been delivered there by third parties from whom it is purchased;
  - the purchaser of the Rheinfelden Persulfates Business could continue to take solution from the pipeline. (Alternatively, he could construct his own unloading station in front of the persulfates plant for use by third parties, although this would require some investment.)
- Other raw materials are bought in bags and stored in the factory.

As described above, in all cases the raw materials are freely available on the market and can be transported to and stored at the persulfates production site.

Energy

- Electricity

This can either be obtained from the site production of electricity or from an energy company. Transformers are used at the site. The Persulfates Business has its own rectifier.

- Steam, nitrogen, compressed air, water, deionized water, drinking water, telecommunications and computer network are available from the industrial park site, for example, by means of pipelines where appropriate.

Services

The following services are furnished by the site at the moment, but could also be obtained from third parties:

Maintenance (including plant engineer), purchasing, personnel services, accountancy services, security and environmental protection services, quality control, services of a works doctor, general services.

Site security services and the internal transport system (rail) would have to be used by a purchaser.

Transport of the product from the production site to the customer could be carried out by the purchaser or subcontracted to a third party as is common in this type of business.

R & D

R&D is not significant for the persulfates business. Degussa's current persulfate R&D activities (budget of maximum DM […]), are sub-contracted to a service provider, Infracor, which is 100 % owned by Degussa. The purchaser of the persulfate business could use his own R&D resources or contract out the R&D to a third party, for example, a university specialized in electrochemistry.

Customers

Customers for persulfates usually have several approved suppliers. There is no "brand loyalty" element in persulfates sales. Once suppliers have been approved by customers (having met the required specifications), contracts are generally awarded on the basis of competition on price.

Summary

The plant at Rheinfelden for the Persulfates Business is a state of the art. The efficient persulfate plant can clearly be operated as a viable persulfates business by third parties. Complete geographic separation of the plant is not possible due to the fact that three tanks containing raw materials required for the business are located in different places throughout the site. This is not material for the operation of the business however.

Although a separation of the works in terms of energy supplies is technically possible, it would require significant investment. A purchaser of the business could, however, easily fulfil its energy requirements through purchases from the site. Services can also either be obtained from the site, or, where it appears sensible, provided by the purchaser itself (accounting services, quality control, computer networks etc).

Third parties can also use the plant economically, if they operate it following the industrial park principle, i.e. taking energy and most services from the works at market prices. This is standard practice at many industrial park sites. It is planned that another business located on the Rheinfelden industrial site will be sold off in the first half of 2001. Degussa has considerable experience of the successful functioning of industrial parks where different businesses are owned and operated by different companies, e.g. at Marl where some 20 companies are active.

The Rheinfelden Persulfates Business is not connected with the main chemical products (silicium chemistry based products) produced on the Rheinfelden site and only accounts for a minor part of the total production (the “per” business as a whole representing only some 20% of the plant’s turnover).

Potential Purchasers

There are a number of potential purchasers as well as the possibility of a management buyout. Each of the potential purchasers would be a viable existing or prospective competitor of Degussa. Each would be independent of and unconnected to Degussa and possess the financial resources and proven expertise enabling it to maintain and develop the divested business as an active competitive force in competition with Degussa.

Effect of Divestment Package

The effect of the divestiture of the above plant together with the business associated therewith and the provision of any necessary services as described above to the purchaser of the business would lead to a competitive market situation in persulfates the same as that existing prior to the transaction. The whole of Degussa’s persulfates production takes place in the Rheinfelden Persulfates plant. The acquirer would thus acquire Degussa’s entire persulfates business. The proposed transaction would thus have a neutral effect on competition in this market.

Schedule 2

Zaltbommel Plant: The Divestment Package (including cationising reagents)

Degussa proposes to divest the entire Zaltbommel Plant of Laporte. The Zaltbommel Plant is a production site for 3-Chloro-2-hydroxy propyltrimethyl ammonium chloride (pre-reagents), 2.3-Epoxy propyltrimethyl ammonium chloride (glycidyltrimethyl ammonium chloride) (finished reagents) and a number of fine chemicals products including glycidylether. The Zaltbommel plant achieves […] of its turnover (approximately […] in 1999) from cationising reagents.

The cationising reagents business at this site and all the other product areas which would be divested are businesses which can be pursued viably and independently by a purchaser. Other products produced on site are mainly a range of epichlorohydrine derivatives such as glycidylethers, metalacetylacetonates and other quaternary ammonium salts. All products resulting from production activities performed in the Zaltbommel plant are listed in **Annex 1** hereto.

The Zaltbommel Plant is owned and operated by Laporte Performance Chemicals B.V., Zaltbommel, The Netherlands, an independent Laporte company according to Dutch law, indirectly wholly owned by Laporte Chemicals Ltd., London, through Laporte Nederland Holding B.V. and Laporte Industries B.V., and is thus an independent fiscal unit. The proposed divestment would involve the sale of all the shares in Laporte Chemicals B.V.. For the avoidance of doubt, this divestment, being the divestment of an entire company, thus covers the entire business of the company including all manufacturing plant and processes, contracts, customers, goodwill, etc.

The company currently operates independently in the Laporte group, with the exception that it utilises the sales organisation service of the Laporte group in some regions. Marketing and sales can easily be done by using the marketing and sales organisation of the acquirer, by setting up a new organisation at the site or by using independent agents and distributors.

Assets

- Land and buildings

The area covered by the Zaltbommel site is 115.000 m^2 of which 35.000 m^2 is in use for company activities. The site is located in an industrial area in Zaltbommel, called the Van Voordenpark 2. On the property are three manufacturing buildings, two office buildings, of which one is partly used for laboratories, one former farmhouse, currently partly used as a pilot plant (multi purpose scaling up facility), four buildings for maintenance and utility supply. Four other buildings are used for storage, one of these is a so-called post-Sandoz storage building. Four enclosed areas are in use for bulk storage in tanks of liquid bulk chemicals. The affected real property and buildings/tanks are illustrated by the map and photographs attached as **Annexes 2 and 3** hereto.

- Property

The site is fully owned by the company. All permits for full operation of the plant are in place. There is no third party property/equipment on the site.

Personnel

The Zaltbommel Plant is operated by some […] staff which would remain with the Plant.

The company is currently run by the General Manager and a Management Team of […]. […] people work directly in manufacturing, […] in maintenance, […] in warehousing, […] people in the lab, quality control and pilot plant, […] in finance and administration, […] in marketing and sales support, and […] in the health, safety and environment fields. Since the Permitted Purchaser will acquire the shares in Laporte Performance Chemicals B.V., no separate transfer of employment contracts is necessary.

Intellectual Property

[…]. The general business information, manufacturing technology and processing know-how and process designs necessary to operate the production processes in Zaltbommel are owned by Laporte Performance Chemicals B.V. The production process and the chemical "recipe" for every product manufactured at Zaltbommel is kept on file and is updated as improvements are made either to the process itself or by way of modifications to raw materials in order to improve productivity, yield or performance. This know-how will be transferred along with the business.

Access to Raw Materials

- Two main raw materials are used for the production of cationising reagents, Trimethylamine and epichlorhydrine. These are supplied by third parties. The amines used are purchased from […], […] and […]. The amines are transported to the site by tanker-car. Epichlorohydrine is purchased from […], […], […]. This product is also transported to the site by truck.

- All other raw materials used for the production of cationising reagents and all other products listed in Annex 1 are readily available on the market and are already purchased independently by the company from third parties.

Energy

Electricity is supplied to the plant as are natural gas and water. Gas is supplied via pipeline, electricity via wire and water also via pipeline. Purchases of energy and water could remain unchanged.

Services

Maintenance for electrical installations and instrumentation is covered by an outside contractor. The contract for this maintenance is a contract between the legal entity at the site and the contract partner and could thus continue.

R&D

All relevant R&D is done solely on the Zaltbommel site. R&D is important for the application technology support to customers for cationising reagents. It is furthermore carried out in relation to continuous improvement of the production processes of the various end products. Product developments are regarded as being important for the growth of the company. This is valid also for all other products listed in Annex 1.

Customers

There are only some ten important cationising reagents customers in the EEA. Typical brand loyalty is not an issue for cationising reagents, but the service and product quality provided by this site make customers decide to purchase from Zaltbommel. This is valid also for customers of all the products listed in Annex 1.

Summary

Bearing in mind that the whole Zaltbommel Plant will be sold and this is a viable and successful business which is not dependent on the rest of Laporte to function, the purchaser would be able to operate it as a stand alone business.

Potential Purchasers

There are a number of potential purchasers for Laporte Performance Chemicals B.V. as well as the possibility of a management buyout.

Potential purchasers would be viable existing or prospective competitors of Degussa. Each would be independent of and unconnected to Degussa and possess the financial resources and proven expertise enabling it to maintain and develop the divested business as an active competitive force in competition with Degussa.

Effect of Divestment Package

The effect of the divestiture of the above plant together with the business associated therewith as described above to the purchaser of the business would lead to a competitive market situation in cationising reagents the same as that existing prior to the transaction. The whole of Laporte's cationising reagents production takes place in the Zaltbommel Plant. The acquirer would thus acquire Laporte's entire cationising reagents business. The proposed transaction would thus have a neutral effect on competition in this market.

The fact that a purchaser of the Zaltbommel Plant would also acquire the additional business carried out there will not affect the independence or viability of operating the cationising reagents business.

Schedule 3

Hythe Plant: The Divestment Package (including hydroxy monomers)

Degussa proposes to divest the Hythe Plant and Businesses. The Hythe Plant is a production site for hydroxy monomers (i.e. hydroxy ethyl acrylate, hydroxy ethyl methacrylate, hydroxy propyl acrylate and hydroxy propyl methacrylate, referred to together as “hydroxy monomers”) together with a range of multi-functional monomers and polyalkylene glycols (“PAGs”). The Hythe Plant achieves […] of its turnover (approximately […] in 2000) from hydroxy monomers. All products resulting from production activities performed at the Hythe Plant are listed in **Annex 1** hereto.

The Hythe Plant is owned by Laporte Performance Chemicals UK Limited (“LPCUKL”). LPCUKL also owns businesses located at Knottingly and Barry. For this reason, the divestment will be effected by means of an asset sale. All customer and employment contracts together with any other current contracts or rights necessary to operate the Hythe Businesses including goodwill and know-how will be assigned along with the transfer of the Plant.

The company currently operates independently in the Laporte group, with the exception that it utilises the sales organisation services of the Laporte group internationally. Marketing and sales can easily be done by using the marketing and sales organisation of the acquirer, by setting up a new organisation using a proportion of the existing Laporte sales teams or by using independent agents and distributors.

Assets

- Land and buildings

The area covered by the Hythe site is 52 acres of which approximately 30 acres is in use for company activities. The site is located in a petrochemical complex near Southampton in the south of England. On the property are three administration buildings (one of which is not in current use), one new laboratory and R&D facility, workshops and stores and engineering development offices. There are four distinct manufacturing facilities for the following product sectors: hydroxy monomers, multi-functional monomers, di-methyl esters and PAGs. In addition, there are comprehensive utilities to supply each of the plants, a large tank farm area, covered warehouses and drumming facility and an effluent facility that serves all units. The affected real property and buildings/facilities are illustrated by the aerial photograph and plan attached as **Annexes 2 and 3**.

- Property

The site is held under a 999 year lease, the freehold to which is owned by Esso. All permits for full operation of the plant are in place. There is no third party/equipment on the site.

Personnel

The Hythe Plant is operated by some […] personnel. The employment contracts of these personnel would be transferred along with the Businesses.

The company is currently run by the General Manager and a Management Team of six. […] people work directly in manufacturing, […] in maintenance, […] in technical services, […] in finance and administration, […] in warehousing and […] in health and safety.

Intellectual Property

The general business information, manufacturing technology and processing know-how and process designs necessary to operate the production processes at Hythe are owned by LPCUKL. The production process and the chemical "recipe" for every product manufactured at Hythe is kept on file and is updated as improvements are made either to the process itself or by way of modifications to raw materials in order to improve productivity, yield or performance. This know-how (together with any other relevant intellectual property) will be transferred along with the Businesses.

Access to Raw Materials

- Three major raw materials are used on the site: ethylene oxide ("EO"), propylene oxide ("PO") and methacrylic acid ("MA"). EO is sole supplied to the site under a long-term agreement with […]; PO is supplied mainly by […] under rolling term contracts; and the site obtains […] of its MA requirements from […], together with a range of other suppliers including [..], […] and […]. Each of these raw materials is supplied to the site by bulk road tanker.

- All other raw materials used at the site are readily available on the market and are already purchased independently by the company from third parties.

Utilities

Electricity is supplied to the plant as are natural gas, nitrogen and water. Purchases of energy and water could remain unchanged.

Other utilities on site include steam generation, cooling water, compressed air and comprehensive effluent treatment and waste disposal facility. These utilities operations will be transferred with the plant.

Services

Plant maintenance, including electrical installations, instrumentation and control is conducted internally. These maintenance operations, including staff and facilities, will be transferred with the plant.

SHE

The site is a COMAH-registered site and has its own certified team of specialists who continuously monitor, supervise and ensure compliance with applicable legal regulations. These personnel will be transferred with the plant.

R&D

All relevant R&D is done solely on the Hythe site. R&D is important for the application support to customers for the Hythe products. It is furthermore carried out in relation to continuous improvement of the production processes of the various end products. Product development is regarded as being important for the growth of the company. This is valid also for all products listed in Annex 1. Additionally, there are specific technical support personnel for certain products who work with the customers on product development and new applications.

Customers

The leading […] customers account for approximately […] of sales of hydroxy monomers and multi-functional monomers for the site. The customer base for PAGs is more widely dispersed. Typical brand loyalty is not an issue for hydroxy monomers, but the performance quality and service provided by the site make customers decide to purchase from Hythe. This is valid also for customers of all the products listed in Annex 1.

Summary

Bearing in mind that the whole Hythe Plant will be sold and this is a viable and successful business which is not dependent on the rest of Laporte to function, the purchaser would be able to operate it as a stand alone business.

Potential Purchasers

There are a number of potential purchasers as well as the possibility of a management buyout. Potential purchasers would be viable existing or prospective competitors of Degussa, such as […], […], […] and [..]. Each would be independent of and unconnected to Degussa and possesses the financial resources and proven expertise enabling it to maintain and develop the divestment business as an active competitive force in competition with Degussa.

Effect of Divestment Package

The effect of the divestiture of the above plant together with the associated business to the purchaser would lead to a competitive market situation in hydroxy monomers the same as that existing prior to the transaction. The whole of Laporte's hydroxy monomers production takes place at the Hythe Plant. The acquirer would thus acquire Laporte's entire hydroxy monomers business. The proposed transaction would thus have a neutral effect on competition in this market.

The fact that a purchaser of the Hythe Plant would also acquire the additional business carried out there will not affect the independence or viability of operating the hydroxy monomers business.