

***Case No COMP/M.2297 -
BP CHEMICALS /
SOLVAY (PP)***

Only the English text is available and authentic.

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

Article 6(1)(b) NON-OPPOSITION
Date: 29/10/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29/10/2001
SG (2001) D/291972

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 Where possible the information omitted has been replaced by ranges of figures or a general description.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

Dear Sir/Madam,

Subject: Case No COMP/M.2297 – BP/Solvay - (PP)

Notification of 27.09.2001 pursuant to Article 4 of Council Regulation No 4064/89¹

1. On 27.09.2001, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89² by which the undertaking BP p.l.c. acquires control of the part of Solvay S.A. that produces and sells Polypropylene resins (“Solvay PP”) by way of purchase of shares and of assets.
2. The notified transaction forms part of a series of transactions between BP p.l.c. (“BP”) and Solvay S.A. (“Solvay”) involving three separate operations. This decision concerns the acquisition of sole control by BP of Solvay’s Polypropylene (PP) business. Decision No. COMP/M.2299-BP/Solvay (HDPE JV) concerns the acquisition of joint control by BP and Solvay of the two companies’ High Density Polyethylene (“HDPE”) businesses. The third transaction is Solvay’s acquisition of BP’s engineering polymers business, however, this third transaction does not have a Community dimension.
3. After examining the current notification, the Commission has concluded that the notified operation falls within the scope of Council Regulation (EEC) No.4064/89 (the

¹ OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

² OJ L 395, 30.12.1989 p. 1; corrigendum OJ L 257 of 21.9.1990, p. 13; Regulation as last amended by Regulation (EC) No 1310/97 (OJ L 180, 9. 7. 1997, p. 1, corrigendum OJ L 40, 13.2.1998, p. 17).

Merger Regulation) and that it does not raise any serious doubts as to its compatibility with the common market and with the EEA agreement.

I. THE PARTIES

4. BP p.l.c. is the parent company of the UK based multinational BP Group with activities in oil exploration, petroleum and petrochemical.
5. Solvay, based in Belgium, is the parent company of an international group of companies active in four sectors: chemicals, plastics, processing of plastic products and pharmaceuticals.

II. THE OPERATION

6. The current operation will lead to the acquisition by BP of sole control over the Solvay PP Business by means of a mixed sale of shares and assets. The assets of the Solvay PP Business located in Italy and US will be sold directly to BP. The remaining assets of the Solvay PP Business will be transferred from their existing owners (wholly-owned subsidiaries of Solvay in France and Belgium) to two new companies (incorporated in France and Belgium respectively). Subsequently, the entire share capital of the two new companies will be transferred to BP.

III. CONCENTRATION

7. BP acquires within the meaning of Article 3(1)(b) of the Council Regulation sole control of a part of Solvay, i.e. Solvay's PP business.

IV. COMMUNITY DIMENSION

8. The undertakings concerned have a combined aggregate world-wide turnover of more than € 2 500 million³ in 2000 (BP: € 160 240 million; Solvay's PP business: € [...] million). In each of three Member States, the combined aggregated turnover of the undertakings concerned was more than € 100 million in 2000 ([...]). In each of the same three Member States, the turnover of each of the two undertakings was more than € 25 million in 2000. None of the undertakings achieved in 2000 more than two thirds of their aggregate Community-wide turnover within one and the same Member State. Consequently, the notified operation has a Community dimension according to Article 1(3) of the Merger Regulation.

V. COMPETITIVE ASSESSMENT

A. Relevant markets

Polypropylene (PP resins)

9. The only relevant sector involved in the transaction is the production and sale of Polypropylene (PP) resins. PP resins are one of the world's most used plastics and used

³ 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.

by the plastic processing industry for a large number of applications. PP belongs to the polyolefins family, a category of thermoplastics derived from the group of base chemicals known as olefins (e.g. propylene and ethylene). Olefins are obtained by the cracking of naphtha (one of the products produced from crude oil). Polyolefins are manufactured by the polymerisation of olefins and the polyolefins family also includes polyethylene (PE).

10. PP resins can be divided into three types based on their physical characteristics and the production methods: 1) homopolymers, 2) random copolymers and 3) impact (or block) copolymers. Homopolymers are more rigid and have better resistance to high temperature and are widely used in the packaging industry in for example film, containers and closures. Random co-polymers are transparent and very tough at ambient temperatures and are more easily processed and welded than homopolymers and are used in films, document folders and food packaging. Impact copolymers can be classified according to their rubber content and are used in automotive exteriors (e.g. spoilers, protective strips, mud flaps etc.).
11. On the supply side all three types of PP resins are made by polymerizing propylene, however ethylene is also added in the process. Homopolymers and random copolymers can be produced in the same reactor, whereas for the production of impact copolymers, an additional reactor is generally needed. The Commission has investigated these markets in previous cases. The Commission concluded that impact copolymers might be considered a separate market⁴. Subsequently the Commission found grounds for considering that there were two separate relevant markets, one for homopolymers and random copolymers combined and one separate market for impact copolymers⁵.
12. In previous decisions the Commission concluded that the geographic market for the sale and production of PP resins is Western Europe (EEA + Switzerland)⁶.
13. However, in this case it is not necessary to exactly define on the relevant product markets, as the proposed operation will not create or strengthen a dominant position irrespective of the precise market definition adopted.

B Related markets

14. There are also a number of other markets related to the horizontally affected PP market. These include the downstream market for PP compounds and other downstream activities of PP resins (e.g. films, non-woven and rigid products). In addition they include the upstream market of the licensing of PP Process Technology and sale of PP catalysts and the market for production and sale of propylene.
15. These related product markets do in general not create any competition concerns, whereas the ethylene market may lead to a vertically affected market depending on the geographic scope of the market.

The production and sale of Ethylene

⁴ Case No IV/ M.269 – Shell/Montecantini

⁵ Case No COMP/M.1751 Shell/BASF/Nicole JV

⁶ Case No COMP/M.1751 Shell/BASF/Nicole JV

16. Propylene is the principal raw material for the production of PP, however ethylene is also used as a co-monomer in PP production. Solvay is not involved in the sale of ethylene into the merchant market, but BP has minor merchant sales. The supply of ethylene has previously been considered by the Commission to be a separate relevant market, although no specific pronouncement has been made in relation to its geographic dimension.
17. On the basis of narrow product markets, a vertically affected market might arise in relation to the ARG catchment area. This area is from a geographic point of view limited to the pipeline network from Antwerp (Belgium) to Ludwigshaven (Germany). This is the catchment area that can be reached by that particular pipeline. It should be noted that on 27 July 2001 BP/EON notified a transaction⁷ to the Commission by which BP and E.ON will acquire joint control of Veba Oel AG, which is currently under control of E.ON. In addition, on 10 July 2001 Shell and RWE notified a transaction by which they will acquire joint control over a joint venture⁸ consisting of Shell's and RWE's downstream oil and chemicals businesses. Both transactions are likely to affect the same markets, in particular the market for sale of ethylene in the ARG area.

Assessment

18. BP and Solvay accounts for a combined total market share of [10-20]% (BP: [5-15]%, Solvay [0-10]%) in 2001 on the merchant market for sale of PP resins in Western Europe. The transaction only gives rise to a horizontally affected market for production and sale of homopolymers and random co-polymers combined in Western Europe. The parties estimate that BP and Solvay in 2001 account for a combined total of [10-20]% (BP [10-20]%; Solvay [0-10]%) of the Western European market for homopolymers and random co-polymers combined. On the market for impact copolymers their combined market share would in 2001 amount to [0-10]% of the merchant sales in Western Europe.
19. The main competitors present are Basell ([30-40]%), Borealis ([10-20]%), DSM ([0-10]%), Atofina and Repsol ([0-10]% each) and Dow ([0-10]%) of the Western European market for homopolymers and random co-polymers combined. With this market structure, the horizontal overlaps do not give rise to competition concerns.

Production and sale of ethylene

20. BP is currently a net purchaser of ethylene in Western Europe. Even assuming that the BP/E.ON/Veba Oel and the Shell/Dea transactions are taken into account, Veba would according to information provided by the parties account, in 2000, for [...] % and Shell/DEA for [...] % of the merchant market for production and sale of ethylene in the ARG area.
21. In the view of the parties no foreclosure effects can arise on this basis due to the fact that BP will only have one PP production facility in the area (the Lillo facility). Moreover, the parties submit that only a low volume of ethylene is consumed in the

⁷ COMP/M. 2533 - BP/E.ON /Veba Oel joint venture

⁸ COMP/M.2389 – Shell/Dea

production of PP as ethylene accounts for only 2-3% of the volume and 2-3% of the value of the raw materials used to produce PP resins. The Commission supports this view as this information has been confirmed by the Commission's market investigation.

22. Consequently, the current acquisition will not have any significant effect on the supply of ethylene in the ARG area. The vertical relationship and BP's position on the upstream ethylene market in the ARG area and its position in the downstream market for the production of PP resins in Western Europe do not give rise to any foreclosure effects. Consequently, this vertical relationship does not give rise to serious doubts as to the compatibility of the current operation with the common market regardless of whether the BP/E.ON/Veba Oel the Shell/Dea transactions are taken into account.

VI. CONCLUSION

23. For the above reasons, the Commission decides 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
(Signed)
Mario MONTI
Member of the Commission