

***Case No COMP/M.2396 -
INDUSTRI KAPITAL /
PERSTORP (II)***

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

Article 6(2) NON-OPPOSITION
Date: 11/05/2001

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 11.05.2001

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PUBLIC VERSION

MERGER PROCEDURE
ARTICLE 6(1)b DECISION
WITH COMMITMENTS

To the notifying party

**Subject: Case No COMP/M.2396 - INDUSTRI KAPITAL/PERSTORP (II)
Notification of 5.4.2001 pursuant to Article 4 of Council Regulation
No 4064/89¹**

1. On 5 April 2000, the Commission received a notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 (“the Merger Regulation”) by which the Industri Kapital group (“Industri Kapital”) acquires within the meaning of Article 3(1)(b) of the Merger Regulation control of the specialty chemicals business of Perstorp AB (“Perstorp”), Sweden.
2. The parties submitted undertakings together with the notification, designed to eliminate competition concerns arising from the transaction. Subject to full compliance with these undertakings, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement.

I. THE PARTIES

3. Industri Kapital manages and controls a number of private equity funds. Among numerous undertakings controlled by those funds are Dynea Oy Ab (“Dynea”)², which is, among other businesses, active in the field of speciality chemicals.

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).

Formerly Neste Chemicals Oy and Dyno ASA (see case *COMP/M.1813 – Industri Kapital(Nordkem)/Dyno*).

4. Perstorp is a Sweden-based enterprise with core businesses in the field of speciality chemicals and flooring. Perstorp's chemicals operations are mostly related to formaldehyde based applications, more specifically, to the production of resins for various industrial purposes, moulding compounds and composites. Perstorp is also active in the production of formaldehyde, catalysts for formaldehyde production and formaldehyde technology.

II. THE OPERATION

5. The present operation involves Industri Kapital acquiring the specialty chemicals business of Perstorp. Industri Kapital, through the IK 2000 Fund, intends to acquire all the shares in Perstorp through the investment vehicle Sydsvenska Kemi AB ("Sydsvenska"), a newly incorporated Swedish limited company. On 22.3.2001, Sydsvenska announced a public offer for all the shares in Perstorp. The acceptance period started on 6.4.2001 and will end on 6.6.2001. Prior to the closing of the offer, the flooring activities of Perstorp (which are mainly part of the subsidiary Pergo AB) will be separated from Perstorp through a floatation on the Stockholm stock exchange. The intended transactions will ultimately result in Perstorp's chemical operations being owned by different holding companies, which in turn will be owned by the IK 2000.

III. CONCENTRATION

6. IK 2000 Fund is a private equity fund. It is not a legal entity, but based on a contractual arrangements between the Fund's investment manager, IK 2000 Ltd., incorporated under the laws of Jersey, and the investors in the fund. IK 2000 Ltd. is wholly owned by Industri Kapital Europe B.V., which in turn is owned by Industri Kapital Europe N.V., which is the ultimate parent company in the Industri Kapital group. IK 2000 Fund is designed as a limited partnership, with IK 2000 Ltd. as general partner, and the investors as limited partners. Thus, IK 2000 Ltd. represents the limited partnership as shareholder in the portfolio companies, and can in all material respects exercise the voting rights that stem from the shareholdings in Sydsvenska. The investors in the IK 2000 Fund have not retained any power to exercise voting rights in the portfolio companies. Consequently, after the transactions, IK 2000 Ltd. will have sole control over Perstorp.

IV. COMMUNITY DIMENSION

7. Industri Kapital and Perstorp have a combined aggregate world-wide turnover in excess of EUR 5,000 million (in 2000: Industri Kapital EUR 9,455 million; Perstorp EUR 583.4 million). Each of them have a Community-wide turnover in excess of EUR 250 million (Industri Kapital EUR 5,723 million; Perstorp EUR 331 million), but they do not achieve more than two-thirds of their aggregate Community-wide turnover within one and the same Member State. The notified operation therefore has a Community dimension.

V. COMPETITIVE ASSESSMENT

8. The transaction will result in horizontal and vertical overlaps between Perstorp and Industri Kapital's portfolio company Dynea as indicated below.

A. Relevant product markets

1. Formaldehyde based resins

PF/UF resins

9. Industri Kapital submits that, with regard to the chemical consistency, formaldehyde based resins can be divided into urea formaldehyde based resins and/or melamine resins (“UF resins”) and phenol formaldehyde based resins, including phenolic resins with resorcinol (“PF resins”).
10. Dynea is active as a producer of both PF and UF resins. Perstorp is primarily a producer of PF resins and has very limited operations in the UF segment. Industri Kapital submits that UF and PF resins constitute separate product markets. This has been confirmed by the investigation. Customers cannot substitute PF and UF resins due to their special characteristics, neither is easily possible to switch production from PF resins to UF resins or vice versa.³ As there is no overlap in UF resins, for the assessment of this case, only PF resins are relevant.

Resols/novolacs

11. According to Industri Kapital, PF resins can be further divided into liquid PF resins (“resols”) and solid PF resins (“novolacs”). Perstorp produces both resols and novolacs whereas Dynea only produces resols. The parties’ activities therefore overlap only in resols.
12. Industri Kapital has submitted that, compared with the production of resols, additional processing is required when novolacs are produced. More precisely, after the water has been removed by distillation, the reaction mixture is discharged to a novolac storage tank and thereafter poured on a cooling belt to solidify the resin into flakes or tablets. The production of novolacs therefore requires additional equipment, such as storage tanks and a cooling belt. Furthermore, if novolac is further processed into powder resins, grinding and bagging equipment are needed. Considering these additional stages of processing, Industri Kapital argues that there is only limited substitutability between the production of novolacs and resols.
13. All customers contacted by the Commission have indicated that in the face of a price increase of the order of 5-10%, they would not be able to switch from resols to novolacs or vice versa. They have indicated that resols and novolacs are used in different applications.
14. The Commission’s investigation shows that the substitutability from the supply side is limited. Third parties have indicated that switching to produce solid resins requires additional technology.
15. On the basis of the foregoing and for the purposes of this case, the Commission draws the conclusion that resols and novolacs constitute separate product markets. In view of the fact that the parties’ activities overlap in resols, the following therefore concerns only liquid PF resins (“resols”).

Segmentation of PF resins

³ See also case *COMP/M.1813 – Industri Kapital(Nordkem)/Dyno*

16. Industri Kapital further argues that liquid PF resins developed for particular application constitute different product markets as they are not substitutable. PF resins are used for wood applications and for non-wood (technical) applications such as paper lamination and impregnation, insulation bonding, foundry processes, abrasives, refractory, rubber, fertilisers, felt, composites, moulded compounds, friction, coating and adhesives and other technical applications. Industri Kapital has identified overlapping activities between Perstorp and Dynea in the following areas: particle board resins in Germany (“V-100 particle board resins”), resins for insulation bonding, foundry and abrasives.
17. Industri Kapital submits that the design of a resin depends on the application. By way of example, Industri Kapital submits that a resin for foundry industry is not substitutable with a resins for plywood industry due to differences in physical characteristics. Furthermore, Industri Kapital contends that resins for different applications differ in price, the price being higher for speciality resins which are produced in smaller volumes. By way of example, based on the information submitted by Industri Kapital, the price per ton for V-100 particle board resins (see further below) varies between EUR 300 and 400; for insulation bonding resins EUR 250 and 500; for PF resins for paper based overlays EUR 380 and 1000; for abrasive resins EUR 700 and 1350; and for foundry resins EUR 1000 and 1250.
18. The Commission’s investigation shows that the different applications have indeed specific requirements regarding performance and quality of the resins. More specifically, those factors are linked to binding power, ageing, water resistance and possible emissions of formaldehyde.
19. As to the question whether it is possible to substitute resins developed for a particular application with resins used for other applications, the investigation confirms Industri Kapital’s submission that the substitutability is very limited. Resin customers have indicated that they would not be able to switch to resins developed for other applications. The investigation also shows that resins are often specifically tailored to specific needs with customised features. The investigation also confirms Industri Kapital’s submission that there are significant price differences between resins for different kinds of applications. In general, resins for wood applications and insulation bonding are of low value whereas resins for foundry and abrasives are much more expensive.
20. Although some producers are technically able to produce more than one type of resin the Commission’s investigation in this case shows that producers of PF resins do not typically produce a whole range of resins but rather tend to specialise in certain applications. The production of a resin for a different application is not only dependent on the technical installation (i.e. the suitability of the boiler to produce different kinds of resins) but also on experience and know-how of the producer, in particular the access to the necessary recipes. This means that an immediate change of production is usually not possible.
21. For the assessment of this case it is necessary to further examine two types of resins: V-100 particle board resins and insulation bonding resins. For the other types of resins where the parties’ activities overlap, competition concerns would not arise.
22. In Germany, there exists a special standard for particle boards used in outdoor constructions (V-100). The V-100 standard is mandatory under certain German regulations for ready particle board and only approved resins can be used for its

production. After extensive testing only PF resins, methyl diisocyanate (MDI) resins and melamine urea phenol formaldehyde (MUPF) resins have received specific approval from the Bundesanstalt für Materialprüfung (BAM) to be used for V-100 particle board.

23. With regard to V-100 particle board resins, the investigation shows that particle boards are used for various applications in-house under dry or moisture conditions or for outdoor construction. Normally, particle board is glued with UF resins or melamine urea formaldehyde (MUF) resins.
24. Industri Kapital submits that PF, MUPF and MDI resins constitute the relevant product market, since all three are equally approved by the German regulatory body. For the purposes of this decision, however, it is not necessary to examine further whether PF, MUPF and MDI resins constitute one relevant product market or distinct markets since the operation as notified would lead to the creation of a dominant position in V-100 particle board resins in Germany regardless of the market definition used.
25. As for resins for insulation bonding, Industri Kapital submits that insulation bonding resins are typically short condensed PF resins with a high degree of water dilutability. Insulation bonding resin customers contacted by the Commission have indicated that they would not be able to switch to other types of resins in the manufacture of insulation materials.

Conclusion

26. On the basis of the foregoing and for the purpose of this decision, the Commission draws the conclusion that UF resins and PF resins constitute separate product markets both from the demand and the supply side. With regard to PF resins, the Commission considers that it has been sufficiently shown that resols and novolacs constitute separate relevant product markets. For the purposes of this case, resins for V-100 particle board, insulation bonding, foundry and abrasives constitute separate product markets.

2. Formaldehyde

27. Perstorp and Dynea manufacture formaldehyde. Formaldehyde is made from methanol and is a colourless gas compound which is dissolved in water (formalin). It is used in the manufacture of UF and PF resins, in plastics and in a variety of special industrial chemicals, for instance as preservative in some paints and coating products and in the production of adhesives for the wood panel industry.
28. Industri Kapital submits that formaldehyde constitutes a separate product market since it has no realistic substitutes as a chemical building block and in terms of price. The investigation has confirmed this.⁴
29. On the basis of the foregoing and for the purposes of this decision, the Commission concludes that formaldehyde constitutes a separate relevant product market.

3. Formaldehyde technology and catalysts

⁴ See also case *COMP/M.1813 – Industri Kapital (Nordkem)/Dyno*.

30. Industri Kapital submits that the relevant market should be defined as the market for formaldehyde (turnkey) technology. Industri Kapital further submits that it is likely that silver catalysts and metal (oxide) catalysts form two separate product markets.
31. In the production of formaldehyde, a catalyst is needed for oxidation and dehydrogenation of the methanol. According to Industri Kapital, two technologies can be employed to produce formaldehyde: the silver catalyst process and the metal (oxide) process.
32. In the silver catalyst process, granulated pure silver is used as a catalyst. The typical formaldehyde yield for the silver catalyst process ranges from 87 to 88% of methanol. In the metal (oxide) process, a catalyst system containing iron/molybdenum oxide is used. The methanol yield is typically 92-93%. In view of the fact that more methanol (0.45 tons per 1 ton of 37% formaldehyde solution) is required in the silver catalyst process than in the metal (oxide) process (0.42 tons of methanol per 1 ton of 37% formaldehyde solution), Industri Kapital submits that in this respect the silver catalyst process is in a disadvantaged position. This can, however, be offset by lower initial capital investment as compared to the metal (oxide) process which triggers higher equipment costs and higher electricity consumption.
33. Industri Kapital submits that the two types of processes are substitutable when a formaldehyde plant is constructed. According to Industri Kapital, when investing in a new plant, the selection between the two processes depends on several factors such as raw material costs, fixed costs, product quality and plant size. This has been largely confirmed by the Commission's investigation. The investigation also shows that once the production technology has been chosen, it is very difficult, if not impossible, to switch using another technology.
34. For the purposes of this decision, the investigation supports Industri Kapital's submission that formaldehyde (turnkey) technology constitutes one separate product market.
35. With regard to the catalysts, the investigation suggests that once the particular technology has been chosen, only certain type of catalysts (either silver or metal oxide) can be used. However, the question whether the two catalyst processes should be regarded as constituting one single product market or whether two product markets should be defined can, however, be left open as the operation as notified would not lead to the creation of a dominant position.

B. Relevant geographic markets

1. PF resins

36. Industri Kapital submits in the notification that formaldehyde based resins in general are traded throughout Europe. With regard to resins, however, Industri Kapital submits that closeness to the customer is often important due to the cost of transportation. Industri Kapital nevertheless submits that there is a competitive interaction between producers in neighbouring Member States and regions and that the relevant geographic market for liquid PF resins is at least EEA-wide but probably including neighbouring countries such as the Baltic States, parts of Russia and countries in Eastern and Central Europe.

37. The Commission's investigation shows that, as regards resins for abrasive and foundry, the markets are wider than national. Most producers deliver to most Member States regardless of the location of production facilities. This is true due to the high value of these resins which makes transport costs not important. However, the investigation shows that for V-100 particle board resins and insulation bonding resins, the geographic market is more limited.
38. With regard to V-100 particle board resins, the V-100 standard is based on specific German building regulations and thus does only exist in Germany. Industri Kapital therefore submits that Germany should be considered to be the relevant geographic market.
39. The assumption of a national German market has been confirmed by the market investigation which shows that customers source their resins on a national level. Therefore, the Commission concludes that the relevant geographic market for V-100 particle board resins for the purpose of this assessment is Germany.
40. As regards insulation bonding resins, Industri Kapital submits that the relevant geographic market for insulation bonding resins is at least EEA-wide. Industri Kapital contends that insulation bonding resins can be transported over long distances avoiding high temperatures.
41. For the reasons set out below, however, the Commission considers that with regard to Norway, Sweden and Denmark, this area as a whole constitutes the relevant geographic market for the purposes of this decision.
42. The market investigation has confirmed that the delivery radius is limited and does not go beyond the region composed of Norway, Sweden and Denmark. Insulation bonding resins are a rather low value product with a low profit margin and with comparatively high transportation costs due to a high water content. The comparatively low profit margin can be explained in view of the fact that the basic know-how and technology for insulation bonding resin production is widely spread, and that insulation bonding resins are produced in large batches. In addition, resins are characterised by a relatively short life span and have to be transported at a constant temperature. Insulation bonding resin customers in the Nordic region have indicated that high transportation costs strongly favour local or regional sources of supply.

Conclusion

43. On the basis of the foregoing and for the purposes of this decision, the markets for abrasive and foundry resins are wider than national. As regards resins for V-100 particle board resins, the relevant geographic market is Germany. Concerning insulation bonding resins, the relevant geographic market comprises Norway, Sweden and Denmark (or "the Nordic area").

2. Formaldehyde

44. Industri Kapital submits that the relevant geographic market for formaldehyde is at least EEA wide but should probably also include neighbouring countries such as Russia, the Baltic States, Poland, Hungary, Slovakia and Turkey. It claims that formaldehyde is an internationally traded commodity which can be transported over

long distances. In its submission, it also refers to the fact that major manufacturers of formaldehyde are located all over Europe and that there are trade flows throughout Europe. However, the notifying party states that most of the formaldehyde is produced as captive production of companies active in downstream markets.

45. The scope of the geographic market for trading formaldehyde is limited and, at most, regional (*COMP/M.1813 – Industri Kapital(Nordkem)/Dyno*). The findings have been confirmed also in the present case. More particularly, the investigation has confirmed that transportation costs and the stability of the chemical effectively limit the supply of formaldehyde and that customers prefer to source formaldehyde from the closest possible location. Indeed, in a vast majority of cases, formaldehyde is purchased in the direct neighbourhood of the production facility, sometimes directly linked through a pipeline.
46. With regard to the Nordic countries, the investigation shows that there are supplies from Perstorp's plant in the south of Sweden to Denmark but no deliveries from a competing Swedish producer, Casco, who is situated more north. Customers located in Denmark, Sweden and Norway have indicated that they source formaldehyde nationally or from the neighbouring Nordic countries. Customers located in Denmark have indicated that they do not source formaldehyde from Germany due to transport costs and that, in the face of a price increase of 5-10%, they would not consider this option either. All the formaldehyde producers contacted in Germany have indicated that they do not supply formaldehyde in Denmark and that they would not consider supplying Denmark either.
47. As regards continental Europe, the investigation shows that the markets are regional rather than national.

Conclusion

48. On the basis of the foregoing, the Commission concludes that the relevant geographic market for trading formaldehyde is limited and, at most, regional, depending on the location of the production plant. For the purposes of this case, the relevant geographic market is considered to be Denmark. With regard to continental Europe, the markets are regional.

3. Formaldehyde technology and catalysts

49. The notifying party submits that there are major manufacturers and licensors of formaldehyde (turnkey) plants all over the world. Turnkey plants, according to Industri Kapital, are traded internationally. By way of example, Industri Kapital submits that, during 1999, Perstorp has been contacted to build five new plants in Europe and Asia (China and Indonesia). Industri Kapital further submits that prices are relatively homogenous in all parts of the world.
50. With regard to catalysts, Industri Kapital submits that catalysts are provided globally. By way of example, Industri Kapital submits that Perstorp supplies metal (oxide) catalysts to formaldehyde producers in Europe, North and South America, Asia, Australia and Africa.
51. The Commission's investigation confirms the global nature of both the market for formaldehyde (turnkey) technology and the market for catalysts.

C. Assessment

1. PF resins

a) Foundry resins

52. The operation as notified would not lead to the creation or strengthening of a dominant position in foundry resins even if considered on the narrowest geographic market possible, that is, on the national level.
53. At the EEA wide level, the new entity would have [5-10%] of the market (Dynea [0-5%], Perstorp [0-10%]). Ashland would be the market leader with [25-35%] of the market and Borden would have [15-25%] of the market.
54. Competition concerns would not arise on the national level either. The parties' businesses would overlap only in Sweden, where the combined market share of the new entity would be [25-35%] (Dynea [15-25%]; Perstorp [5-15%]). On the Swedish market, however, the parties to the concentration face substantial competition from large companies, such as Ashland [25-35%], Borden [20-30%] and Huttens [15-25%]. Therefore, the operation does not lead to the creation of a dominant position in the Swedish market.

b) Abrasive resins

55. The operation as notified would not lead to the creation or strengthening of a dominant position in abrasive resins even if considered on the narrowest geographic market possible, that is, on the national level.
56. At the EEA-wide level, the parties would attain a market share of [25-35%] (Dynea [5-15%], Perstorp [15-25%]). However, in view of the fact that Bakelite accounts for [25-35%] of the EEA-wide market and that there are number of other companies on the market including Borden [5-10%], Vianova [0-5%], Huttens [0-5%] and Casco [0-5%], the operation does not lead to the creation of a dominant position.
57. At the national level, the parties' activities overlap in Germany, Italy and the United Kingdom. In these countries, however, the new entity would face competition from producers who are either present market leaders or equally strong as the new entity. In Germany, the new entity would have a combined market share of [30-43%] (Dynea [0-5%]; Perstorp [45-55%]). However, Bakelite has a market share of [35-45%]. In Italy, where the aggregated market share of the new entity would be [20-30%] (Dynea [15-25%]; Perstorp [0-5%]), Bakelite is the market leader with [50-60%] of the market. In the United Kingdom, the new entity would have combined sales of [25-35%] (Dynea [20-30%]; Perstorp [0-10%]) while Borden leads the market with a share of [45-55%]. Moreover, customers in these Member States have confirmed that they have an access to a number of alternative suppliers and that competitive market conditions prevail.
58. On the basis of the foregoing, the Commission concludes that the operation as notified would not lead to the creation of a dominant position for abrasive resins.

c) V-100 particle board resins

59. Dynea and Perstorp have overlapping activities in the production of resins for V-100 particle board in Germany. Dynea supplies the German market for V-100 particle

board from Meerbeck, where its production is conducted through a tolling agreement with SASOL. Perstorp is active in the production of V-100 particle board resins through its subsidiary Plasta Erkner.

60. On the narrowest market definition possible - on the market for PF resins for V-100 particle board - the combined market share of the merged companies would be [55-65%] (Dynea [35-45%]; Perstorp [15-25%]). Dynea and Perstorp face competition of Bakelite, who accounts for [30-35%] on this market, and Fenolit who has [0-5%] of the market.
61. On the wider market comprising PF and MDI resins for V-100 particle board, the combined market share of the new entity would be [30-40%] (Dynea [25-35%]; Perstorp [5-15%]). It is to note that those figures are related to the value of the sales and not – as indicated above – in terms of volume. This is due to the fact that Industri Kapital claims that volumes of PF, MUPF and MDI are not comparable. It submits that the companies face competition from Bakelite [15-25%], Bayer [10-20%], Huntsman [10-15%] and Borsodchem [0-5%].
62. On the hypothesis of the broadest market definition possible including PF, MUPF and MDI resins, the new entity would account for [35-45%] of the sales on the market in value (Dynea [25-35%]; Perstorp [5-15%]). Major competitors include Bakelite [10-20%], Bayer [5-15%], BASF [5-15%], and Huntsman [5-15%].
63. Regardless of the market definition used, therefore, the market share of Dynea and Perstorp would in any case be more than [30-40%] with a significant increment of [5-25%]. Under all possible market definitions considered, the strongest competitor would only have roughly half of the market share in comparison to the combined sales of the parties to the concentration.
64. Industri Kapital submits that the total market of the V-100 particle board segment is considerably small, accounting only for about 10% of the total particle board production in Germany and about 3% of the total European-wide particle board production. The investigation shows, however, that new resins which could be used for the production of V-100 particle board have to be specially approved by the German BAM and have to undergo extensive testing. This approval by the regulatory body therefore constitutes a considerable entry barrier to the market for resins for V-100 particle board which, in combination with the small size of the market, makes it unattractive for competitors to enter the market.

Conclusion

65. On the basis of the foregoing, the Commission concludes that the operation as notified would lead to the creation of a dominant position on the market for V-100 particle board resins in Germany.

(d) Insulation bonding resins

66. Both Perstorp and Industri Kapital – via Dynea - manufacture insulation bonding resins.
67. Dynea is the only producer of insulation bonding resins in Norway and supplies insulation bonding resins also to Denmark. Perstorp started to supply insulation bonding resins to Isover in Sweden in 1999.

68. Industri Kapital argues that the customer industry is very concentrated and that most major producers of insulation materials (most importantly Isover⁵ and Rockwool) have established – exclusively or additionally to the supply on the merchant market - captive insulation bonding resin production. The notifying party submits that, in Sweden, Perstorp produces insulation bonding resins solely in accordance with the recipes provided by Isover.
69. At present, producers of insulation materials in the Nordic area either purchase resins from Dynea or Perstorp or they purchase formaldehyde and manufacture binder resins themselves.
70. As a result of the operation, the parties would become the only supplier of insulation bonding resins in Sweden, Norway and Denmark. This would give them the ability to control the supply and prices of insulation bonding resins and therefore create a dominant position. The mere possibility that customers could start operating an own production facility is not sufficient to counterbalance the position of a sole supplier. Customers have voiced concern about the disappearance of a choice for the supply of insulation bonding resins.
71. In addition, following the operation, Industri Kapital would become the only supplier of both the insulation bonding resins and formaldehyde to customers in Denmark. The new entity would be in a position to control the prices and the supplies of insulation bonding materials in Denmark in the absence of alternative suppliers outside Industri Kapital. Moreover, as will be explained below, Industri Kapital would also control the supply and the prices of formaldehyde to insulation materials customers in Denmark.
72. The investigation shows that potential entry of other suppliers to the Nordic area is not likely in the foreseeable future.

Conclusion

73. On the basis of the foregoing, the Commission concludes that the operation as notified would lead to the creation of a dominant position in the market for insulation bonding resins in Norway, Sweden and Denmark.

2. Formaldehyde

74. Perstorp and Dynea manufacture formaldehyde primarily for captive use in their production of resins and other chemicals.
75. The envisaged concentration would lead to a very strong market position in Denmark. Dynea sells formaldehyde in Denmark via its participation in the Nordalim joint venture and accounts for [65-75%] of the market. Perstorp holds [20-30%] of the Danish market via exports from Sweden. The Commission's investigation also shows that there are some exports from Dynea's production outlets in the south of Norway to Denmark (Dynea is the only producer of formaldehyde in Norway). Following the operation, Industri Kapital would have a *de facto* monopoly in the sale of formaldehyde to third parties in Denmark. Moreover, in view of the fact that Industri Kapital's formaldehyde customers include insulation material producers, who are in

⁵ Isover belongs to the Saint-Gobain group. Isover Oy (Finland), Gullfiber AB (Sweden) and Saint-Gobain Isover A/S (Denmark) all belong to the group.

direct competition with Industri Kapital on this downstream market, the new entity would have an incentive to raise the prices of formaldehyde or foreclose the market altogether, thus squeezing its insulation material competitors.

76. With regard to continental Europe, the operation is unlikely to lead to adverse competition effects there. In Germany, Industri Kapital's market share would be [20-30%] (Dynea [20-30%], Perstorp [0-5%]). Industri Kapital has submitted that it would face competition from Caldic [20-30%], Bayer [10-15%] and Atofina [5-15%]. In Belgium, the parties to the concentration account for [10-20%] market share, stemming from the activities of Dynea. Competitors on the market include Lambiotte [35-45%] and Caldic [30-40%]. In the Netherlands, the new entity currently accounts for some [55-65%] of the sales of formaldehyde to third parties (Dynea [5-15%], Perstorp [45-55%]). In this market, competitors are Borden [25-35%] and Caldic [5-10%]. However, as indicated above, markets are regional rather than national and customers located in the Benelux area have indicated that alternative suppliers are located in the neighbouring countries, most importantly in Germany and France.

Potential competition

77. Industri Kapital has submitted that there are two plants in Germany which constitute viable alternative suppliers of formaldehyde to customers in Denmark and will exert competitive pressure on both the Nordalim joint venture and Perstorp's plant in south of Sweden. More particularly, Industri Kapital has submitted that Celanese has a formaldehyde plant near Hamburg in Germany with a capacity of [20.000-35.000] tons of which Industri Kapital has estimated approximately [5-15%] to be available for merchant sales. Industri Kapital has also submitted that ACM Woodchem is currently constructing a new plant in Wismar, Germany, close to the Danish border. Industri Kapital has estimated that the new plant will have a capacity of approximately [30.000-40.000] tons of which roughly [20-30%] will be available on the merchant market.
78. The Commission's investigation has, however, shown that no actual or potential competitor in neighbouring countries has an interest in entering the Danish market. With regard to Celanese, the Commission's investigations show that merchant sales of formaldehyde are unlikely to take place in the future. As concerns the new ACM Woodchem plant, this plant is being constructed for the Egger Group. Sales to third parties in Denmark are unlikely also from this plant. In sum, the investigation has clearly confirmed that none of the manufacturers of formaldehyde situated in Sweden, the Netherlands, Belgium, Germany and the UK contacted by the Commission would consider starting supplies to the Danish market due to transport costs. All customers contacted in Denmark have also confirmed that they would not be able to switch their current supplies to producers other than Dynea and Perstorp.
79. A number of third parties, both customer and competitors, have expressed serious concern over the market position achieved by the new entity.

Conclusion

80. On the basis of the foregoing, the Commission concludes that the operation would lead to the creation of a dominant position in Denmark.

3. Formaldehyde technology and catalysts

81. Perstorp, through its subsidiary Formox, is a supplier of formaldehyde technology around the world. Formox sells turn-key formaldehyde plants and licenses its production technology to third parties. In addition, Formox is active in the production of metal (oxide) catalysts. Dynea has its own silver catalyst technology but it has only very limited activities in licensing its technology to third parties, and there is therefore only a *de minimis* overlap between the parties. The investigation shows that a number of formaldehyde producers operate formaldehyde plants by using their own technology. The Commission therefore considers that, in view of the fact that the overlap between the parties very limited and that there is a large number of formaldehyde producers who employ their own formaldehyde technology and who could also sell that technology on the market, the operation as notified would not lead to the creation or strengthening of a dominant position.

VI. UNDERTAKINGS SUBMITTED

82. In order to remove the competition concerns resulting from the proposed transaction, Industri Kapital has offered the Commission the following undertakings, submitted together with the notification. The undertakings are annexed to the decision and form an integral part of the decision.
83. First, Industri Kapital has offered to cause Perstorp to divest its resins business together with its merchant formaldehyde business, including one formaldehyde plant, in Perstorp, Sweden. The Perstorp resins business will include personnel and existing assets and customer contracts necessary to continue the resins activities. In turn, the Perstorp formaldehyde business will include the production facilities pertaining to the relevant plant, customer contracts and personnel and/or service agreements necessary to continue the production and sale of merchant formaldehyde. Both businesses will be sold to one and the same purchaser. Thus, in creating a new, independent competitor to the parties, this divestment would remove the competition concerns arising in insulation bonding resins and formaldehyde in Denmark, Sweden and Norway or, alternatively, on the Nordic area and guarantee competing supplies of both formaldehyde and insulation bonding resins.
84. Second, Industri Kapital has committed to divest its phenolic resins operation in Meerbeck, Germany. This business is currently conducted through a toll arrangement with SASOL. The divestment will include the referred toll manufacturing agreement, with Industri Kapital stepping out of it, and customer contracts necessary to continue the production and sale of phenolic resins. This commitment will remove the entire overlap between the parties on the market for V-100 particle board resins in Germany.
85. Customers and competitors have supported these commitments.
86. In the light of the above, the Commission concludes that the undertaking given by Industri Kapital is sufficient to remove the competition concerns identified by the Commission during its investigation of the proposed operation on condition that Industri Kapital complies with the following commitments which are subject to change by the Commission pursuant to paragraph 16 of the Annex:
- (1) the divestment commitments set out in subparagraphs 1(i) and 1(ii) of the Annex and further described in subparagraphs 3(i) and 3(ii) thereof;
 - (2) the commitment to maintain the viability of the divested businesses set out in paragraph 4 of the Annex;

- (3) the completion of the divestment procedure as set out in paragraphs 7, 8 and 9 of the Annex;
 - (4) the purchase of the divested businesses by a purchaser or purchasers fulfilling the criteria provided for in paragraphs 2 and 10 of the Annex;
 - (5) compliance with any measure imposed by the trustee to make the parties comply with their commitment as indicated in paragraph 14(i)(c) of the Annex;
87. The above aspects of the undertaking constitute conditions, as only by fulfilling them (subject to any change pursuant to paragraph 16 of the Annex) can the structural change on the relevant market be achieved.
88. The remaining aspects of the undertaking constitute obligations (subject to any change pursuant to paragraph 16 of the Annex), as they concern the implementing steps which are necessary to achieve the structural change that is sought. In particular, this relates to:
- (1) the employee non-solicitation obligation contained in paragraph 6 of the Annex;
 - (2) the obligation to hold the divested businesses separate and manage them as distinct and saleable entities, as provided for in paragraph 5 of the Annex;
 - (3) the reporting obligation described in paragraph 11 of the Annex;
 - (4) the provisions relating to the trustee in paragraphs 12, 13, 14 (i) sub a) and sub b), 14 (ii), 14 (iii), 14 (iv) and 15 of the Annex.

VII. CONCLUSION

89. The Commission concludes that the undertakings submitted by Industri Kapital during the course of the proceedings is sufficient to address the competition concerns raised by this concentration. Accordingly, subject to full compliance the undertakings, the Commission has decided not to oppose the notified operation and to declare it compatible with the common market and with the functioning of the EEA Agreement. This decision is adopted in application of Article 6(2) of Council Regulation (EEC) No 4064/89.

For the Commission

Mario Monti
(Member of the Commission)

Project PEPPAR
Non-confidential version

Commitments in Case No COMP/M. 2396 –
Industri Kapital/Perstorp

Industri Kapital N.V., on its own behalf and on behalf of the group of companies ultimately controlled by it (hereinafter jointly referred to as “Industri Kapital”), hereby makes the following commitments (“the Commitments”) to the European Commission in order to obtain the Commission’s clearance of Industri Kapital’s (through Sydsvenska Kemi AB) notified public bid for the shares in Perstorp AB (“Perstorp”) (“the Concentration”).

These Commitments shall take effect upon the date of the Commission's decision declaring the concentration compatible with the common market pursuant to Article 6 of the Merger Regulation (“The Effective Date”).

A. The divestment commitment

1. Industri Kapital undertakes to make the following divestitures:
 - (i) Industri Kapital shall cause Dynea Oy Ab to divest its phenolic resins business in Meerbeck, Germany (conducted through a toll arrangement with SASOL) (“the Meerbeck Business”) to a Suitable Purchaser as defined under 10 below, and
 - (ii) Industri Kapital shall cause Perstorp to divest its resins business in Perstorp, Sweden (“the Perstorp Resins Business”) together with its merchant formaldehyde business (including formaldehyde plant # 1) in Perstorp, Sweden (“the Perstorp FH Business”) to a Suitable Purchaser as defined under 10 below.
2. These divestments should result in a viable existing or potential competitor, independent of and unconnected to Industri Kapital, and thus result in a market structure on the markets for formaldehyde in Denmark and Sweden and phenolic resins in Germany that will resolve the competition problems identified by the Commission thereby rendering the proposed concentration compatible with the common market.
3. The divestments will include the following:
 - (i) The Meerbeck Business will include the tolling production agreement with SASOL and customer contracts necessary to continue the production and sale of phenolic resins.
 - (ii) The Perstorp Resins Business will include personnel and existing assets, as well as customer contracts, necessary to continue the resins activities performed by Perstorp at its Perstorp site in Sweden. The Perstorp FH Business will include the production facilities pertaining to the relevant plant, customer contracts (including

supplies to Perstorp) and personnel and/or service agreements necessary to continue the production and sale of merchant formaldehyde. The Perstorp Resins Business and the Perstorp FH Business are jointly referred to as the "Perstorp Businesses".

The Meerbeck Business and the Perstorp Businesses are jointly referred to as the "Divested Businesses".

B. RELATED COMMITMENTS

4. Industri Kapital undertakes to preserve the full economic viability, marketability and competitiveness of the divested businesses pending divestiture, in accordance with good commercial practice, as will be monitored by the trustee in accordance with paragraph 14. In this regard Industri Kapital undertakes to reduce the minimum any possible risk of loss of competitive potential of the divested businesses resulting from the uncertainties inherent to the transfer of a business. Pending divestiture, Industri Kapital will manage the divested businesses in the best interest of the business. In particular, Industri Kapital undertakes not to carry out any act upon its own authority which may have a significant negative impact on the economic value, the management or the competitiveness of the divested businesses until the date of divestiture. Industri Kapital also undertakes not to carry out upon its own authority any act which may be of such a nature as to alter the nature of or the scope of activity of the divested businesses, or the industrial or commercial strategy or the investment policy of the divested businesses. Sufficient resources shall be made available for the business to develop until the divestiture, based on the approved strategic and (annual) business plans.
5. Until the completion of the sale of the divested businesses, Industri Kapital undertakes to ensure that the divested businesses are held separate and managed as distinct and saleable entities with their own management accounts. Industri Kapital further undertakes to ensure that the divested businesses have their own management, separate and distinct from that of the merged entity and supervised by the trustee. The management, under the guidance and control of the trustee, shall be under instruction to manage the divested businesses on an independent basis in order to ensure their continued viability, market value and independence.
6. Industri Kapital undertakes not to hire or solicit the staff transferred with the Divested Businesses for a period of two years after the closing date.

C. The divestment procedure

7. Industri Kapital commits to effect or procure the sale of the divested businesses within within [...] calculated from the date of the completion of the notified public bid for the shares in Perstorp, but not later than [...] from the 18 of June 2001 (the "First Divestment Period") to one or several purchaser(s) approved by the Commission on terms approved by the Commission, although the Perstorp Businesses only to one and the same purchaser. One or several purchaser(s), together with a copy of the sale and purchase agreement(s), signed subject to approval by the Commission, shall be proposed by Industri Kapital for approval by the Commission. The Trustee shall be sent

simultaneously a copy in order to enable it to perform its duties in accordance with paragraph 14(iii).

8. Industri Kapital shall be deemed to have complied with these Commitments, within the First Divestment Period, if it has entered into binding sale and purchase agreement(s) approved by the Commission for the disposal of the Divested Businesses, provided that the transaction is completed within three months of the closing date or such other time limit as may subsequently be agreed by the Commission.
9. If Industri Kapital is not able to fulfil its undertaking to divest the Meerbeck Business or the Perstorp Resins Business together with the Perstorp FH Business by the end of the First Divestment Period, it shall give the Trustee an irrevocable power of attorney to sell the Meerbeck Business and/or the Perstorp Businesses, as the case may be, to one or several Suitable Purchaser(s) [...] within an additional period of [...]. This additional period is referred to as the "Extended Divestment Period".
10. Industri Kapital recognises that for a proposed purchaser to meet with the Commission's approval, it shall be a viable existing or potential competitor, independent of and unconnected to Industri Kapital, possessing the financial resources, proven expertise and having the incentive to maintain and develop the Divested Businesses as an active competitive force in competition with Industri Kapital and other competitors. In addition, the acquisition of the business by a particular proposed purchaser must neither be likely to create new competition problems nor give rise to a risk that the implementation of these Commitments will be delayed. Industri Kapital must be able to demonstrate to the Commission that the purchaser(s) meets the requirements of these Commitments and that the businesses are sold in a manner consistent with these Commitments. In order to maintain the structural effect of these Commitments, Industri Kapital will not subsequently acquire influence over the whole or part of the Divested Businesses, unless the Commission has previously found that the structure of the market has changed to such an extent that the absence of influence over the Divested Businesses is no longer necessary to render the concentration compatible with the common market.
11. Industri Kapital shall report in full writing in English to the Commission and the Trustee on developments in the negotiations with potential purchasers of the Divested Businesses within 10 days after the end of every month following the Effective Date (or otherwise at the Commission's request).

D. The Trustee

12. Industri Kapital shall, subject to approval by the Commission as set out below, appoint an independent trustee or trustees (the "Trustee"), such as an investment bank or consultant or auditor. The Trustee shall be independent of Industri Kapital, possess the necessary qualifications to carry out the task and shall not be, or become, exposed to a conflict of interest. Industri Kapital shall propose two candidate Trustees and the terms of the mandate for approval to the Commission with adequate information (including names and curricula vitae of the Trustee and their key personnel) for the Commission to verify that the Trustee fulfils these requirements. This proposal shall be made at the latest two weeks after the Effective Date. The Trustee will be remunerated in such a way as not to impede its independence and effectiveness in fulfilling the mandate. The

mandate must include all provisions necessary to enable the Trustee to fulfil its duties under the Commitments accepted by the Commission.

13. In case of rejection by the Commission of the proposed Trustees, Industri Kapital commits to propose two other candidate Trustees within two weeks from the date of the Commission's decision to reject the proposed Trustees.
14. The Trustee shall assume its specified duties in order to ensure compliance in good faith with the Commitments on behalf of the Commission and taking into account the legitimate interest of Industri Kapital.

The Trustee shall, following its appointment:

- (i) oversee the on-going management of the Divested Businesses with a view to ensuring its continued viability and marketability and monitor the compliance by Industri Kapital with the conditions and obligations under these Commitments. Therefore the Trustee shall:
 - (a) monitor that Industri Kapital maintains the viability and marketability of the assets and/or businesses to be divested in accordance with this undertaking, and the management and operation of the assets or businesses in the normal course of business, in accordance with past practice, until divestiture;
 - (b) monitor the sales process during the First Divestment Period and sell at [...] during the Extended Divestment Period.
 - (c) propose to Industri Kapital such measures as the Trustee considers necessary to ensure compliance with the conditions and obligations under the Commitments, in particular the maintenance of the viability or marketability of the Divested Businesses and the non-disclosure of competitively sensitive information by Industri Kapital, and the Trustee shall be entitled to impose such measures (with the approval of the Commission) in the event that Industri Kapital does not comply with the Trustee's proposals within the timeframe set by the Trustee;
- (ii) provide to the Commission, with a simultaneous non-confidential copy to Industri Kapital, a written report within 10 days after the end of every month concerning the monitoring of the operation and management of the Divested Businesses in order to assess whether the business is held in a manner consistent with the Commitments. In addition to these reports, the Trustee shall promptly report in writing to the Commission if the Trustee concludes on reasonable grounds that Industri Kapital are failing to comply with any of the conditions or obligations under these Commitments. Industri Kapital shall receive a simultaneous non-confidential copy of any such additional reports;
- (iii) assess the suitability of the proposed purchaser and the viability of the Divested Businesses after the sale to the purchaser and give its opinion to the Commission on whether the proposed divestment complies with the conditions and obligations under these Commitments;
- (iv) cease to act as Trustee only after the Commission has discharged it from its duties, following a request from the Trustee made after all the commitments

with which it has been entrusted have all been implemented. However, the Commission may at any time require the reappointment of the Trustee if it subsequently appears that the relevant remedies might not have been fully and properly implemented.

15. Industri Kapital shall provide the Trustee with all such assistance and information, including copies of all relevant documents, as the Trustee may reasonably require to monitor compliance with the conditions and obligations under these Commitments. Industri Kapital will keep the Trustee with office space necessary for it to perform its duties. Industri Kapital shall be available for regular meetings with the Trustee, according to a timetable agreed between them, in order to provide the Trustee, either orally or in document form, with all information necessary for the completion of its task. At the request of the Trustee, Industri Kapital shall provide the Trustee with access to sites which are being divested.

E. The review clause

16. The Commission may, upon request from Industri Kapital showing good cause and after hearing the Trustee, and where relevant allow for:
 - (i) an extension of the First Divestment Period, or
 - (ii) the sale of the Divested Businesses to one or several purchaser(s) proposed to the Commission pursuant to paragraph 10 without one or more assets, facilities, contracts or other rights or obligations that are part of the Divested Businesses as referred to in paragraph 1, or
 - (iii) waive one or more of the conditions and obligations in these Commitments
17. Industri Kapital shall address any request for an extension of time periods no later than one month prior to the expiring of such time period, showing good cause. Only in exceptional circumstances will Industri Kapital be entitled to request an extension within the last month of any period.

Stockholm, 3 May 2001

On behalf of Industri Kapital

Carl Wetter / Olle Rislund